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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA  
*Legislature*



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ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 10, 1992  
2:05 P.M.

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12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JUNE 10, 1992

16 2:05 P.M.

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25 Reported by:

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR NICHOLAS PETRIS

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RICHARD R. BAYQUEN, Chief Deputy Director  
Department of Rehabilitation

STEFAN L. MANOLAKAS, Member  
California Horse Racing Board

JOHN L. RODRIGUEZ, Chief Deputy Director  
Department of Health Services

DAVE HELMSIN, Legislative Advocate  
California Association of Health Facilities

BRUCE POMER, Legislative Advocate  
California Conference of Local Health Officers  
Health Officers Association of California  
California Public Health Foundation

THERESA MENEFEE, Former Employee  
Department of Health Services

MARZ J. GARCIA, Director  
Office of Administrative Law

JOHN GARAMENDI, Commissioner  
Department of Insurance





APPEARANCES (CONTINUED)

HARVEY ROSENFELD, Chairman  
Voter Revolt

EDWARD P. HOWARD, Esq.  
Hall & Phillips  
Counsel for Voter Revolt

MICHAEL McNAMER, Senior Counsel  
Office of Administrative Law

JAMES M. STROCK, Secretary  
California Environmental Protection Agency

GREG SCHULTE  
U.S. Customs  
Oceanside, California

LEONARD E. ROBINSON, Environmental Manager  
TAMCO Steel Mill  
Rancho Cucamonga, California

THOMAS McHENRY, President  
Hazardous Waste Association of California

WILL ALLEN  
California Institute for Rural Studies

CAMELIA YARBOROUGH-NUNES  
Concerned Citizens of Brentwood

TOM CANDRIAN, Director  
Pesticide Action Group  
Marin County

JULIE COOK  
Citizens for a Healthy Ukiah

LEW DUNN  
California Committee against Toxics

DOUG JACKSON  
Clear Water Action Project  
San Francisco





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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Governor's appointees, we have Stefan Manolakas, Member of the California Horse Racing Board.

MS. MICHEL: Senator Petris, I think you need a full Committee. I think you need to wait until Senator Roberti gets here.

SENATOR PETRIS: We do? Is there a problem?

SENATOR MELLO: I expressed my concern about the --

SENATOR PETRIS: Oh, okay, we'll wait. Yes, we put it over at your request.

SENATOR MELLO: -- hiring practices of the Horse Racing Board.

SENATOR PETRIS: Yes, I remember. Well, we'll get to it later.

I think Mr. Manolakas has spent more time here than he has in the Board meetings, so maybe today we'll come to a conclusion.

I think Senator Roberti would like to be here for all the rest of them.

[Thereupon legislative agenda items were acted upon by the Rules Committee.]

CHAIRMAN ROBERTI: Why don't we take up Richard R. Bayquen, Chief Deputy Director, Department of Rehabilitation.

We have heard Mr. Bayquen, have we not?

MR. BAYQUEN: Two years ago, Senator.





1 MS. MICHEL: In another life.

2 CHAIRMAN ROBERTI: In another life?

3 [Laughter.]

4 CHAIRMAN ROBERTI: Okay, in this life tell us,  
5 Mr. Bayquen, why you feel you're qualified to assume this  
6 position?

7 Senator Way is here as well, very good.

8 MR. BAYQUEN: I'm trying to get me wife in the room.  
9 I'll go ahead and start.

10 Good afternoon, Mr. Chairman, Senators.

11 My name is Richard Bayquen. I'm here as Chief Deputy  
12 Director of the Department of Rehabilitation.

13 I have the honor and the pleasure of being once again  
14 before this Committee for the very important and sensitive  
15 position as Chief Deputy Director of this Department, which has  
16 a responsibility for providing rehabilitation services to  
17 Californians with physical, mental, sensory, and developmental  
18 disabilities.

19 As you may recall, I had the opportunity to appear  
20 before you a little more than two years ago, as Chief Deputy  
21 Director of the Department of Developmental Services. At that  
22 time, I enjoyed the Committee's favorable confirmation  
23 recommendation to the Floor.

24 In outlining why I believe that I am qualified for  
25 this position, I will touch briefly on my administrative,  
26 managerial, and legislative experience in California state  
27 government, and also my continuing interest and commitment in  
28



1 serving Californians with disabilities.

2  
3 Practically all of my working career has been spent  
4 in California public service. During my career, I have had the  
5 opportunity to serve with seven agencies, and to be appointed to  
6 positions with the Wilson, Deukmejian, and Brown  
7 Administrations.

8 My career in state government started in 1972,  
9 immediately upon graduation from college. I had the good luck,  
10 the good fortune, of being hired by the Department of Finance as  
11 a budget analyst, where I learned the budget processes of both  
12 the executive and the legislative branches of government. I  
13 think this experience has been invaluable to me in subsequent  
14 assignments, because an important and significant aspect of  
15 those assignments has been one of developing budget proposals,  
16 advocating and lobbying for additional dollars to meet expanding  
17 workloads and caseloads, and to improve the services for which I  
18 had responsibility.

19 In 1977, I joined the Health and Welfare Agency as  
20 the Deputy Secretary for Fiscal, where I worked and learned  
21 about virtually every Health and Welfare program, including  
22 Rehabilitation, Mental Health, and Developmental Services.

23 In 1980, I joined the Youth and Adult Correctional  
24 Agency as Deputy Secretary for Fiscal, serving a former  
25 colleague of many of yours, then-Agency Secretary Howard Way.  
26 Later that year, I was appointed Deputy Director of  
27 Administrative Services for the Department of Corrections, which  
28 was just starting to grow at that time. In this capacity, I was





1 a key manager in a very large and complex organization.

2 In 1987, I was appointed Chief Deputy Director of the  
3 Department of Alcohol and Drug Programs, returning to the health  
4 and human services field. In this capacity, I had the  
5 opportunity to be involved in the administration of treatment  
6 and care programs and the development of prevention programs.

7 In 1988, I became acting Chief Deputy Director of the  
8 Department of Developmental Services. Shortly thereafter, I was  
9 appointed by the Governor and confirmed by the Senate in 1990.  
10 In this important position, I not only served the  
11 developmentally disabled, but also had an opportunity to be an  
12 advocate within the Administration for this sensitive and  
13 critical program.

14 Upon the change of Administration in 1991, I worked  
15 briefly for the Assembly Minority Ways and Means Committee  
16 staff, initially as consultant to Subcommittee I, the  
17 subcommittee which deals with health and welfare, and then after  
18 that as Staff Director when Cliff Allenby left and went back to  
19 the California Building Industry Association.

20 Although my stint in the Legislature was short, it  
21 gave me more knowledge, a better understanding, and a deeper  
22 appreciation for the legislative process which benefits me as a  
23 program administrator.

24 My extensive and varied experience, and more  
25 specifically, my Health and Welfare and Disability Program  
26 management experience, has prepared me for the duties of Chief  
27 Deputy Director of the Department of Rehabilitation.  
28



1           Also, I bring a continuing interest in and commitment  
2 to serving people with disabilities. I am very proud of my  
3 many years of public service, but most proud of my service to  
4 Californians with disabilities.

5           I would like to take this opportunity to briefly  
6 address two issues: the Business Enterprise Program, and the  
7 Orientation Center for the Blind. These two programs were the  
8 subject of discussion with this Committee during my Director's  
9 confirmation hearing.

10          The Business Enterprise Program is the federally  
11 sponsored rehabilitation program in which blind and visually  
12 impaired businessmen and women operate food service and other  
13 vending facilities in government-owned and occupied facilities.

14          Let me reaffirm our commitment to not only improve  
15 the Business Enterprise Program, but to also improve our  
16 communication and consultation with the California Vendor Policy  
17 Committee and other vendors.

18          Since Director Tainter's confirmation hearing in  
19 February of this year, the Department of Rehabilitation has  
20 vigorously followed up on every one of the concerns raised by  
21 the California Vendor Policy Committee's resolution. I believe  
22 we have made substantial progress in favorably address and  
23 remedying the issues raised.

24          And furthermore, the Director at that time, he  
25 acknowledged that we were late in submitting reports to the  
26 Legislature as required by Budget Act supplemental report  
27 language and SB 2759, authored by Senator Mello. I am pleased  
28





1 to be able to say that these reports have been completed, and  
2 that they have been shared with the Legislature.

3 As Chief Deputy Director, I intend to improve the  
4 Department's track record by getting reports to the Legislature  
5 on time.

6 Finally, on the Business Enterprise Program, I am  
7 committed to the Department working with the California Vendors  
8 Policy Committee as a team. We will endeavor to do everything  
9 we can to see that all vendors work as a team, and not to  
10 exploit the devisiveness within the vendor community.

11 The Department of Rehabilitation and I commit to  
12 advocating for this very important program to see that  
13 opportunities for program expansion and increased profitability  
14 are pursued.

15 Regarding the Orientation Center for the Blind in  
16 Albany, the Department does not have any plans to close that  
17 facility. If fiscal circumstances and conditions necessitated  
18 revisiting that issue, I assure you that we would not consider  
19 such a decision without appropriately consulting the blind  
20 community of California.

21 My appointment with the Department of Rehabilitation  
22 gives me an expanded opportunity to serve Californians of all  
23 disabilities by playing a key role in providing vocational  
24 rehabilitation services, independent living skills, habilitation  
25 services, and support employment opportunities.

26 Helping people with disabilities to develop job and  
27 independent living skills so that they, too, may have the  
28



1 opportunity to participate fully and equally in the American  
2 dream is something I strongly believe in. I would like to  
3 continue to be a part of this effort.  
4

5 I appreciate your consideration of my appointment  
6 once again, and I'll be happy to answer any questions the  
7 Committee might have.

8 CHAIRMAN ROBERTI: Senator Petris.

9 SENATOR PETRIS: Is your Department funded entirely  
10 from the general fund?

11 MR. BAYQUEN: No, sir. The vocational rehabilitation  
12 program receives 75 percent of our funding from the federal  
13 government, and 25 percent, approximately, from the state. The  
14 vocational rehabilitation program overall is about \$211 million.  
15 We have about \$30-31 million in the general fund match, and the  
16 balance is primarily federal funds.

17 SENATOR PETRIS: Are there any fees charged to  
18 employers?

19 MR. BAYQUEN: Pardon me?

20 SENATOR PETRIS: Are there any fees charged to  
21 employers?

22 MR. BAYQUEN: Not related to our program, no, sir.

23 SENATOR PETRIS: Well, I've been visited by a group  
24 of employers just this week. They're concerned about the  
25 overall workers' comp. problem, and they're strongly opposed to  
26 our rehab. program. They want to eliminate it. They think it's  
27 costing them too much money. They didn't tell me how. They  
28 want to do their own rehab. work, which sounds like of strange





1 to me in the event of a very serious disability, and retraining,  
2 and so forth.

3 Have you had any comments from the business community  
4 along those lines?

5 MR. BAYQUEN: I've only been involved in one meeting,  
6 and I think what those people were talking about was not the  
7 program that the Department of Rehabilitation has  
8 responsibility, but the vocational rehabilitation aspect of the  
9 Worker Comp. System, and concerns that that system, which those  
10 services are primarily provided by private for-profit entities.

11 I think that their issues and concerns have -- go to  
12 that group.

13 SENATOR PETRIS: Are those fees paid by the employer  
14 to the private entities?

15 MR. BAYQUEN: I believe it's paid by the employer and  
16 also from the Workers' Compensation System.

17 But the Department of Rehabilitation is totally  
18 separate from that system.

19 There have some discussions, I know, within the  
20 Capitol on a number of the bills that have been floating around  
21 on Workers' Comp. reform, looking at the Department of  
22 Rehabilitation as an alternative. And I have been involved in  
23 just one very, very brief discussion on that.

24 SENATOR PETRIS: Where do our people come from if  
25 they're not out of Workers' Comp? Where are they from?

26 MR. BAYQUEN: They are people with disabilities who,  
27 hopefully, have heard something from friends, or through some  
28



1 outreach effort, about the Department, and they may have a  
2 physical, mental, developmental disabilities. People from the  
3 developmental disabilities system, typically in our habilitation  
4 program -- which is worth about \$80 million, and that's pure  
5 general fund -- they typically would be referred to us from the  
6 regional center system.

7  
8 SENATOR PETRIS: That's not job-related. They're  
9 trying to get a job.

10 MR. BAYQUEN: Yes, right. In that case, you're  
11 either trying to provide habilitation services, as opposed to  
12 rehabilitation services, or looking for supported employment  
13 opportunities to give those people an opportunity to work in the  
14 community, to give them an opportunity to be part of the working  
15 mainstream.

16 SENATOR PETRIS: So, you don't retrain any injured  
17 workers?

18 MR. BAYQUEN: That is not our department, sir.

19 SENATOR PETRIS: Thank you.

20 SENATOR MELLO: Mr. Chairman, a couple questions.

21 CHAIRMAN ROBERTI: Senator Mello.

22 SENATOR MELLO: Regarding your statement relating to  
23 the Blind Vendors. I think the report to the Legislature was  
24 long overdue, and we finally got that.

25 And you talked about the devisiveness within the  
26 Blind Vendors. I think the report pointed out some of the  
27 problems that are still ongoing.

28 Number one is the fact that the number of Blind



1 Vendors has reduced in California from 350 about three years  
2 ago, down to 220 today, is my latest figure. That's a reduction  
3 of about 40 percent.

4 The second point is, the profitability of those that  
5 are struggling to become Blind Vendors is such that a lot of  
6 them are just giving up and going on welfare, getting Aid to the  
7 Blind, rather than trying to make it on their own.

8 So, I think it's going to take a lot of doing in your  
9 Department to make sure that people who do not want to be on  
10 welfare, who can develop -- we have to provide them  
11 opportunities so that they can continue to operate these Blind  
12 Vendor stations and make a profit at it, become self-sufficient.  
13 So far, they're losing out all over the state.

14 MR. BAYQUEN: Senator, I'm very aware of those  
15 problems and concerns. The report that is required by your  
16 bill, SB 2759, in fact I see that as a very important starting  
17 point. And we do have that report completed, where there is a  
18 survey of facilities and other opportunities, so we can  
19 hopefully expand the Business Enterprise Program.

20 It has been -- it has been going backwards in the  
21 sense that there are less vendors. During these recessionary  
22 times, it's very, very difficult for them to maintain their  
23 profit levels. And it's something that, I know since Director  
24 Tainter's confirmation, that we've worked on very vigorously,  
25 and we will continue to do so. And we've worked in very good  
26 contact, not only with the California Vendors Policy Committee,  
27 but other vendors, and also Kathy Douglas from your staff, to  
28





1 let you know on a regular basis, and we will continue to do  
2 that.

3 And if we need help towards that end, we will not  
4 hesitate to let you know if there is something legislatively  
5 that we need accomplished to make that program more viable, to  
6 make that program more vigorous, to make that program grow as  
7 opposed to decline in numbers, Senator.

8  
9 SENATOR MELLO: I'd like to know what plan you have  
10 for turning this around.

11 The reduction actually came before the recession  
12 started. This loss of 350 down to 200 and something happened  
13 about three years ago, and that was before the so-called  
14 recession we're now in took place, so it's even worse.

15 MR. BAYQUEN: Well, one of the things, again it goes  
16 to the report that we have just recently completed, we've  
17 identified a number of other government-owned or occupied  
18 buildings where there are not Blind Vendors in those buildings.

19 So, first of all, we have to start by identifying  
20 where there are additional opportunities to expand those  
21 Business Enterprise Programs. And again, that was one of the  
22 requirements of your legislation, which we have followed up on,  
23 and so we have identified literally dozens and dozens of other  
24 locations that, heretofore, the Department has not pursued any  
25 expansion because they haven't been aware of those facilities.

26 Additionally, in terms of profitability, one thing  
27 that we have also found is that there are a number of vending  
28 machines throughout state buildings in California and



1 government-owned and occupied buildings in California, where  
2 commissions are not coming to the Vending Stand Account to help  
3 expand and improve that program. So, I believe that there are  
4 probably thousands, if not tens of thousands, of dollars of fees  
5 that should be coming to the Vending Stand Account, which the  
6 Vending Stand Account is there specifically for the purpose of  
7 expanding, of maintaining, and keeping a quality program. And  
8 so, we have identified that, and we are going to be pursuing  
9 with a number of other state agencies and other government  
10 agencies commissions from those vending machines, which should  
11 have been coming to the Vending Stand Account for a number of  
12 years. And I think those are two of the real keys.

13 Also, the Department, as I indicated in my comments,  
14 I think that the Department has not been an advocate for the  
15 program, has not been to other agencies, to other departments,  
16 and at a minimum, making them aware, and making them sensitive to  
17 this program.

18 And one of the things that we have scheduled is,  
19 before the end of this month, on June 30th, at the Health and  
20 Welfare Agency, there is a Director's Meeting every Tuesday, and  
21 one of the concerns that the Vendors have is that when state  
22 employees have fundraisers, or have coffee sales, they're  
23 competing directly with the Vendors. And I think many state  
24 employees are not aware of that direct competition, and the  
25 Vendors, at a minimum, would like to be notified when those  
26 events are going to happen so they won't be producing perishable  
27 products and bringing on additional staff, and not have a  
28





1 market, not have a demand for their products on those days.

2           So, those are a couple of the things that we are  
3 working on, both short-term and long-term, to be more of an  
4 advocate for the program, and to see that we take advantage of  
5 all of the opportunities to establish stands throughout  
6 government-owned and occupied buildings, and to get the vending  
7 machine commissions that are rightfully due to the Vending Stand  
8 Account, which again, will help us to expand and improve the  
9 program. And that's something, again, that we will work hand-in  
10 -hand in partnership with the California Vendors Policy  
11 Committee on that, Senator.

12           SENATOR MELLO: Last question, there's been over \$2  
13 million worth of equipment diverted away from the Blind Vendors.  
14 That came out in the report of the Auditor General here awhile  
15 back.

16           Is there anything that's been done to stop that  
17 diversion of all this equipment? I don't know what's happened,  
18 but it's been stolen, or diverted, or lost, or something.

19           MR. BAYQUEN: My understanding, I believe that that  
20 Auditor General report goes back, oh gosh, I think maybe three  
21 years ago, that there was at least a million -- and it could  
22 have been \$2 million. I don't know -- of equipment that the  
23 Department could not account for.

24           And I don't think anyone at this point can say  
25 conclusively whether or not the equipment was stolen, or whether  
26 or not the equipment was just lost, or not properly accounted  
27 for.  
28



1 I know even before I got to the Department of  
2 Rehabilitation last year, that the Department took very, very  
3 vigorous steps to make sure that they had a inventory accounting  
4 system in place so, hopefully, we would never have a repeat  
5 where equipment would vanish, would disappear, where we could  
6 not account for it, because that's equipment that is paid for by  
7 the Vending Stand Account, paid for from the fees that come from  
8 the Vendors. And if we don't properly account for and take  
9 control of that equipment, it's in the long run only going to  
10 deplete the Vending Stand Account and take away from our  
11 efforts.

12 SENATOR MELLO: Okay, thank you very much.

13 CHAIRMAN ROBERTI: Any other questions?

14 Is there any opposition?

15 SENATOR MELLO: Move the recommendation.

16 CHAIRMAN ROBERTI: Senator Mello moves confirmation  
17 be recommended to the Floor.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye.

22 Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Mello Aye.

25 Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye.  
28



1 Senator Craven. Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 SECRETARY WEBB: Roberti Aye.

4 Four to zero.

5 CHAIRMAN ROBERTI: The vote is four to zero;  
6 confirmation is recommended to the Floor.

7 MR. BAYQUEN: Thank you.

8 CHAIRMAN ROBERTI: The next appointment is Stefan L.  
9 Manolakas. He has a time problem. This is for vote only. He's  
10 a member of the California Horse Racing Board.

11 This is for vote only.

12 SENATOR BEVERLY: I'll move we recommend approval of  
13 the confirmation.

14 CHAIRMAN ROBERTI: Senator Beverly moves confirmation  
15 be recommended to the Floor.

16 Senator Mello.

17 SENATOR MELLO: I just want to comment.

18 I think he's trying hard on the Horse Racing Board.

19 My only reason for raising the questions I did, and  
20 the reason for voting no at this point is because I think, as  
21 Ms. Michel indicated to us, the Horse Racing Board, directly and  
22 indirectly, has the worst record of affirmative action in the  
23 State of California. And I think something has to be done to  
24 turn that around.

25 It's impossible to believe that we are not reaching  
26 to hire different ethnic groups into state-run organizations.  
27 And I think the Horse Racing Board represents that kind of an  
28





1 example.

2 So, it's not something personally against you, but I  
3 think it's the whole Board, due to its past patterns, has to  
4 chance its way of hiring people.

5 MR. MANOLAKAS: We'll do our best to remedy the  
6 problem.

7 SENATOR MELLO: Thank you.

8 CHAIRMAN ROBERTI: Then do we have a motion? Senator  
9 Beverly has moved.

10 Secretary, call the roll.

11 SECRETARY WEBB: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Beverly Aye.

14 Senator Mello.

15 SENATOR MELLO: No.

16 SECRETARY WEBB: Mello No.

17 Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Petris Aye.

20 Senator Craven. Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 SECRETARY WEBB: Roberti Aye.

23 Three to one.

24 CHAIRMAN ROBERTI: The vote is three to one;  
25 confirmation's recommended to the Floor.

26 SENATOR PETRIS: I forgot to make a comment.

27 I understand Senator Mello's concerns. I've been  
28



1 doing some battles there, too over the years, but I was the  
2 first minority Member, Greek-American, to be elected to the  
3 Legislature, and he's the first to be appointed to this Board in  
4 history. So, I think he's sensitive to that.

5 I think if he has anything to say about it, the  
6 policy will improve.

7 SENATOR MELLO: I'm looking forward to that, really.  
8 I think he can do it.

9 MR. MANOLAKAS: Thank you. You're right.

10 CHAIRMAN ROBERTI: Thank you, Mr. Manolakas.

11 [Thereupon the Rules Committee  
12 acted upon legislative agenda  
13 items.]

14 CHAIRMAN ROBERTI: John Rodriguez, Chief Deputy  
15 Director of the Department of Health Services.

16 You've been here three times, Mr. Rodriguez?

17 MR. RODRIGUEZ: This is my third time, sir.

18 CHAIRMAN ROBERTI: Welcome again.

19 MR. RODRIGUEZ: Thank you.

20 CHAIRMAN ROBERTI: Why don't you tell us why you feel  
21 you're still qualified to assume this position?

22 MR. RODRIGUEZ: I won't go into all the background  
23 about my career. I've been with the State of California since  
24 1973.

25 I think the point that I would like to make very  
26 quickly is the things you can expect from me; the management  
27 philosophy that I've developed in the years I've been  
28





1 responsible for the Medi-Cal Program, and which I'm going to  
2 bring to my -- and which I have brought to my current duties as  
3 Chief Deputy.

4 This philosophy is one which emphasizes open and  
5 clear communication with staff inside the Department, and with  
6 interest groups and constituencies outside the Department. It's  
7 a philosophy which clearly articulates our priorities, both  
8 internally and externally. This is a philosophy which is open  
9 to new ideas and other points of view. And a philosophy that  
10 recognizes that we bear a responsibility to improve the programs  
11 that we operate. The status quo is not acceptable.

12 In the weeks and months ahead, we're going to face  
13 one of the greatest challenges we ever had as a state, and as  
14 state employees. It's going to be more important than ever that  
15 we set clear priorities for the services we provide, creatively  
16 implement program changes that may be necessary, and ensure open  
17 lines of communication to and from all concerned.

18 This is the type of leadership that I've demonstrated  
19 over the last few years, and which you can continue to expect  
20 from me in the months and years ahead.

21 I believe that's why I'm qualified for this position,  
22 sir.

23 CHAIRMAN ROBERTI: Very good.

24 Any discussion or debate?

25 Is there anyone here in support? We have Mr. Dennis  
26 Flatt, Kaiser Permanente, however I don't see him in the  
27 audience.  
28



1 MR. RODRIGUEZ: He was here last time and did  
2 testify.

3 CHAIRMAN ROBERTI: Do you have any questions, Senator  
4 Petris?

5 SENATOR PETRIS: He's somebody who wants to testify.  
6 I'll wait. Thank you.

7 MR. HELMSIN: Mr. Chairman, Committee Members, Dave  
8 Helmsin, California Association of Health Facilities.

9 I'd like to put in a good word for Mr. Rodriguez.  
10 I've worked with him for over 20 years, 12 of which was in the  
11 Department of Health Services, where I found his leadership and  
12 decision-making ability exemplary. Few civil service employees  
13 that I've encountered in my career have risen to his standards,  
14 have taken his consideration with the issues.

15 The last seven years, I've worked with John as a  
16 representative of the California Association of Health  
17 Facilities, representing primarily nursing homes which, more so  
18 than any other provider, rely on Medi-Cal for their very  
19 sustenance. We've negotiated some very tricky issues in those  
20 seven years, dealing with reimbursement, enforcement, and other  
21 policy matters. While we've disagreed, often to the point of  
22 litigation, I've often always found John to be open, sincere in  
23 his interest in the issues, and willing to work through problems  
24 in a constructive manner.

25 I think that both the people of California, the  
26 providers, patients, and the Legislature included, are well  
27 served by Mr. Rodriguez in this capacity, and I'd like to see  
28



1 him confirmed.

2 Thank you.

3 CHAIRMAN ROBERTI: Thank you.

4 Theresa Menefee -- with some more support? Please  
5 come forward with support.

6 MR. POMER: Senator Roberti, Members of the  
7 Committee, Bruce Pomer, representing the California Conference  
8 of Local Health Officers, the Health Officers Association, and  
9 the California Public Health Foundation.

10 We have worked with John Rodriguez for several years.  
11 Our President, Carl Smith, would have been here to testify  
12 today, but he had another commitment.

13 I have to say to you in his capacity as Deputy  
14 Directory for Medi-Cal, and in his capacity as Chief Deputy  
15 Director for the Department, we've found John to be open,  
16 accessible, and competent.

17 And I'd like to go a little bit further in saying  
18 that the kind of team that Dr. Coye has assembled around her is  
19 the best that we have seen in over a decade at the Department of  
20 Health Services. And believe me, I've spent many years  
21 representing this group. I've been around for 20 years. I've  
22 worked with John for over ten years. And I think we probably  
23 have one of the best working relationships with DHS that we've  
24 ever had in the history of that 20-year period, and certainly  
25 with the team that he's assembled around with him, and his  
26 ability to come out and meet with us and share difficult  
27 information with us, and truly seek our input and respond to it,  
28





1 makes it an excellent working relationship with -- for us, and I  
2 know for a number of other groups.

3 We certainly recommend that you recommend his  
4 confirmation today.

5 Thank you.

6 CHAIRMAN ROBERTI: Thank you.

7 Any other person in support?

8 In opposition we have Theresa Menefee.

9 MS. MENELEE: I would like to address the issues I  
10 discussed about two weeks ago. I would like to ask the  
11 Committee before Mr. Rodriguez is confirmed that the issues that  
12 I brought up regarding this management style, working with  
13 employees and staff, should be resolved, or to show some support  
14 that he is going to resolve these issues and make the  
15 environment for staff better.

16 And the issues that I addressed were his chief in --  
17 over FMITY, doing his private business on working hours;  
18 husbands and wives working together in divisions, where there is  
19 no support there for employees if they have a discrepancy and  
20 they want to address it to the higher level, there's no support  
21 there if you have a team of husband and wife together.

22 I also addressed about people getting promotions as  
23 far as the CEA appointments and other promotions within,  
24 spouses, or boyfriend-girlfriend type situations that  
25 Mr. Rodriguez is under.

26 And before he's confirmed, I'd like some information  
27 or him to discuss how he plans to alleviate these types of  
28



1 problems, and work with ethnic groups on a more upward mobility  
2 as well as equal opportunity and fair practice in the workplace.

3 CHAIRMAN ROBERTI: Nancy, can you address this point?

4 MS. MICHEL: I just wanted to point out that Dr. Coye  
5 and Mr. Rodriguez and Mr. Joseph have agreed to meet with staff  
6 from the Senate and discuss means and methods of going forward  
7 with some of the problems that have been brought to all of us as  
8 a result of these confirmation hearings.

9 You have a commitment from Dr. Coye, and from  
10 Mr. Rodriguez, and from Mr. Joseph that they will meet with  
11 staff from the Senate to resolve some of these very serious  
12 problems that you've brought to our attention.

13 MS. MENEFEE: Will this be done before he's  
14 confirmed, or is this going to take place after he's confirmed?

15 My concern with that is that Mr. Rodriguez, along  
16 with other management in Health Services, have made promises to  
17 employees that have not been kept. And that is why I am not in  
18 Health Services today.

19 And I -- I feel very uncomfortable to bring issues  
20 out, and then nothing becomes of them.

21 Now, if this is going to take place after he's  
22 confirmed, I'm not comfortable with that because in past  
23 practice, they have not done what they've said they're going to  
24 do.

25 If this is going to be addressed and corrected before  
26 he's confirmed, then I don't have a problem with that.

27 MS. MICHEL: It'll start before he's confirmed.  
28





1 Whether it's finished or not, there's no way of knowing.

2 CHAIRMAN ROBERTI: What we normally do is, we vote  
3 confirmation out to the Floor, and it says on the Floor or at  
4 least two weeks.

5 So, some of these problems -- often it's negotiations  
6 between the person being confirmed and people who are in  
7 opposition, often personnel, people involved in employee  
8 relations, rather, have a chance to work out differences.  
9 That's why we keep it on the Floor for two weeks at a minimum.

10 I suspect that's what we'll do again. So, the  
11 process will start taking place.

12 If there is no resolution, then obviously that'll be  
13 an issue in the confirmation.

14 Senator Petris.

15 SENATOR PETRIS: Can we get a date prior to  
16 confirmation for starting this?

17 MS. MICHEL: Yes.

18 SENATOR PETRIS: I think it would be highly  
19 advisable.

20 One of the complaints has been that Mr. Rodriguez  
21 doesn't show up for meetings. I've discussed this with him  
22 privately, and he denies it, but it is a complaint that we have  
23 in writing from a statewide organization. Some people travel  
24 400 miles to get to a meeting that he had promised, and then he  
25 didn't show up, according to them.

26 Now, Mr. Rodriguez says that just didn't happen, but  
27 in view of that, it seems to me we ought to be sure there's one  
28



1 or two meetings prior to the Floor vote to give the parties a  
2 chance to, you know, get together and thrash these things out.

3 MS. MICHEL: We have Charley Milburn, who is  
4 presently getting us a date for the first meeting. She's on the  
5 phone and will get back to us.

6 SENATOR PETRIS: Okay, that's fine.

7 I'd like to ask a couple of questions.

8 CHAIRMAN ROBERTI: Senator Petris.

9 MS. MENEFEE: I have one other question.

10 Is it possible that this meeting that the Committee's  
11 having with Mr. Rodriguez and Mr. Joseph -- I have been having  
12 ongoing contact with Mr. Joseph -- is it possible that I can be  
13 present for these meetings? I have a complaint that's going  
14 right now that's involving discrimination with the Department.

15 MS. MICHEL: We are not in a position to resolve  
16 individual employee personal grievances.

17 What we were going to approach was the general  
18 problem that seems to exist with regard to affirmative action  
19 and personnel policies within the Department.

20 We were not going to handle individual's personal  
21 employee grievances, especially people who are in the process  
22 with their grievances.

23 MS. MENEFEE: Okay, well, if I eliminate the fact of  
24 the grievance that's in process, I'm still concerned to the fact  
25 that Mr. Rodriguez being confirmed dealing with the  
26 discrimination issues that the Department has, and him being  
27 part of them.  
28



1 MS. MICHEL: I'll be very happy to report back to you  
2 on a regular basis.

3 MS. MENEFEE: Okay, that's fine. Thank you.

4 CHAIRMAN ROBERTI: Senator Petris.

5 SENATOR PETRIS: There was a report in 1990 by the  
6 State Personnel Board -- I realize that's before you came aboard  
7 in your present capacity -- examining the problem that  
8 Ms. Menefee is talking about. And they concluded in their study  
9 that it took your Department, prior to your time, an average of  
10 nearly 315 days to respond to a formal discrimination  
11 complaint.

12 Now, I find that totally unacceptable. This was one  
13 of the things the lady complained about. That compared to 51  
14 days for ABC; 85 days for Employment Development; and 70 days  
15 for Department of Social Services.

16 In some cases, the Department has taken over a year  
17 to investigate and respond to individual complaints. According  
18 to the State Personnel Board regulations, the departments are  
19 required to respond to discrimination complaints within 180 days  
20 from the formal filing. And that seems to me to be a long time,  
21 six months. The 315 is closer to a whole year.

22 Have you worked on improving and closing that gap?  
23 Can you comment on --

24 MR. RODRIGUEZ: Yes, I can.

25 SENATOR PETRIS: I emphasize that this was published  
26 before you went into that job.

27 I'm wondering, you must be aware of it, and I'm  
28





1 wondering what you're doing to improve that.

2 MR. RODRIGUEZ: Yes, I am, Senator.

3 And my perspective of this is, I agree with you.  
4 It's totally unacceptable that we exceed those standards.

5 I don't view, if you will, additional staff as the  
6 answer, either. Not only is it, I think, the wrong approach to  
7 take to solve the problem, but I think it's an unrealistic  
8 expectation that anybody's going to get more staff in the  
9 situation we are now. We're going in the other direction.

10 So, the answer from my point of view, from a  
11 manager's point of view, is you solve underlying problems. And  
12 there's two approaches I take to that.

13 Number one, you solve problems earlier, before they  
14 blow up into -- into complaints that have to be dealt with by  
15 the Office of Civil Rights. And my -- my philosophy, my  
16 approach to these kind of things is, as a senior manager, you  
17 have an open door policy where people who have a problem with  
18 their supervisors or other people in the Department know they  
19 can come to me, and I will provide a forum for discussion and,  
20 hopefully, resolution of this. I've found that -- that getting  
21 all our cards on the table, having people in the room who can  
22 look at each other and talk to each other, tell how they feel,  
23 often leads to resolution of a problem before it gets that far.

24 So, my point here is, reduce the number the ever  
25 gets that far so you don't have to worry about whether it takes  
26 six months or way over.

27 Secondly --  
28



1                   SENATOR PETRIS: How long does it take now? Do you  
2 have a measurement yet?

3                   MR. RODRIGUEZ: Well, I don't know what the average  
4 is for the Department, but there's enough examples, as  
5 Ms. Menefee mentioned, where we exceed the 180-day standard.  
6 Even if it's one, it's unacceptable.

7                   So, I don't have a number. I know we're over, so at  
8 least in some cases, we should be fixing that.

9                   The other approach I would take, Senator, is we need  
10 to sensitize our managers to different cultural backgrounds.  
11 Oftentimes, people say and do things inadvertently, not  
12 intending that they be hurtful in any way. And by better  
13 educating our managers as part of their ongoing development as  
14 supervisors -- and I don't just mean basic supervisory training.  
15 I mean how to supervise folks from different cultural  
16 backgrounds, and what it means. Those kind of educational tools  
17 which, again, prevent the problem before it becomes a problem  
18 would be my techniques and are my techniques for solving the  
19 fundamental problem.

20                   We have put 600 of our 800 supervisors and managers  
21 in our Department through that -- that training regimen already.  
22 And it will be an ongoing thing, not only for our new managers  
23 as they come on, but it will be supplemental every year or two  
24 for refresher stuff for our managers.

25                   The point I'd make about myself, personally, and I  
26 feel it's important to mention this, is sometimes my -- my  
27 accessibility and openness will turn around and bite me. I  
28





1 accept that risk.

2 In Ms. Menefee's case, when she did work in Medi-Cal,  
3 there was an issue and a problem that she had taken to the  
4 Office of Civil Rights. And ultimately I found in her favor; I  
5 found that discrimination had occurred, and I issued her a  
6 formal written letter of apology, in addition to some other  
7 elements of the agreement.

8 So, when I find it, it's going to be dealt with when  
9 it's brought to my attention.

10 SENATOR PETRIS: There's another very serious problem  
11 involving the case that was mentioned previously. Six Black men  
12 filed a discrimination complaint, and they went through the  
13 usual interviews, and statements, and so forth, at the lower  
14 agency level before it came up to the higher level and  
15 eventually wound up in court. And it's alleged that the  
16 Department admitted in court that they had lost the tapes and  
17 files, which is reminiscent of some rather ugly incidents at the  
18 national level. I won't into the 17-minute tape, but I just  
19 did.

20 Are you familiar with that particular problem?

21 Now, again, it's something prior to your time, so  
22 what I'm doing, I'm not criticizing you for any of this. You  
23 can't be held responsible, but I hope you're taking vigorous  
24 steps to correct that situation and eliminate those kinds of  
25 things.

26 MR. RODRIGUEZ: Yes.

27 I'm not in a position where I can comment on the  
28



1 case, because it is in litigation.

2 But in reference to the issue you raised, the tape  
3 recordings that are made of all interviews, I have no excuses  
4 for that. I worked for the Department; I'm in charge of large  
5 parts of the Department. I take responsibility that we did not  
6 have systems in place to make sure that -- that special  
7 situations, where the records are going to be important, are  
8 kept. Not all of them were erased, but it was done accidentally  
9 and without malice by individual in our personnel who was not  
10 given proper direction that these things need to be kept.

11 It's inexcusable. It won't happen again. We've  
12 taken steps internally to make sure it doesn't happen again.

13 SENATOR PETRIS: Are you convinced it was accidental  
14 and not purposeful?

15 MR. RODRIGUEZ: The people that I have asked to look  
16 into that, the people in the Director's Office who I trust a  
17 lot, responded to my specific request that that question be  
18 answered, and they have convinced me that that's the case.

19 SENATOR PETRIS: What is the current effort being  
20 made in closing the gap for Hispanic minorities? That's another  
21 one of the complaints in the past. Are you working on that?

22 MR. RODRIGUEZ: Yes, sir.

23 In fact, when I look at the -- the area that we're  
24 most underrepresented in the Department, it is in exactly that  
25 area.

26 SENATOR PETRIS: Well, Mr. Torres, whom you know, has  
27 frequently reminded us of that.  
28



1           MR. RODRIGUEZ: And he frequently reminds me of it,  
2 too. He does.

3           It's going to be extremely difficult in a situation  
4 where the Department's not growing at all to make huge strides  
5 in this area in the next year or two. In fact, I think our  
6 challenge, and we have our Office of Civil Rights developing a  
7 plan, is if the Department goes into a layoff situation, or a  
8 nongrowth situation where, you know, basically we're not laying  
9 people off, but the people we lose are leaving because they're  
10 going to other departments, is, can we take some pro-active  
11 measures to make sure that -- that on balance of our workforce,  
12 with what's left, that we don't take any steps backward, and if  
13 possible, make that declining workforce improve.

14           Personally, I'm committed to that. The individual I  
15 hired to fill behind me in the Medi-Cal Program, Jose Fernandez,  
16 I think was an excellent hire. And my point in saying that is  
17 that the fundamental way to solve this problem is to increase  
18 your candidate pool in such a way that you're in a position  
19 where you can hire underrepresented groups. If you don't get  
20 them into the candidate pool, let them compete on equal footing,  
21 you can't solve the problem.

22           So, Dr. Coye and I were very aggressive in beating  
23 the bushes for candidates who could come and interview and be  
24 considered for the Medi-Cal job. And we took a little extra  
25 time in filling that position. I ended up staying in it, acting  
26 for a while, but I think it paid off.

27           And that's how I approach those problems.  
28





1                   SENATOR PETRIS: One of the big problems we face is  
2 the lack of health care for almost 7 million Californians, 87  
3 percent of whom work full-time.

4                   Now, I know the Governor has made some kind of  
5 suggestion, and he's indicated that he won't go for a single-pay  
6 plan. He won't go for my plan. He won't go for even the CMA  
7 plan.

8                   Is your Department trying to figure out a solution to  
9 make health care coverage available to everybody?

10                  MR. RODRIGUEZ: Obviously, we're involved in the  
11 little elements of everything that you just mentioned. And we  
12 stay -- we're analyzing and working with groups on -- on their  
13 specific approaches.

14                  My actions right now are, don't take any steps in  
15 terms of -- of reducing state government that takes us off in a  
16 different direction.

17                  Fundamentally, when solving the health care insurance  
18 problems for Californians, we see it to be a situation where we  
19 need, as a society, to define what are priorities are: what  
20 services do we want to provide to all Californians? And then do  
21 a good job in doing those. Take whatever fat there is we can  
22 out of the system through better planning, but basically say, if  
23 we have X amount of money, what can we buy for those  
24 individuals.

25                  We are going to be in a position, I think, in the  
26 short-term here, where programs like Medi-Cal may be shrinking.  
27 We should be using this opportunity to turn -- to make Medi-Cal  
28



1 look like something we want it to look like when -- when the  
2 dust settles and we start building towards a larger health  
3 insurance solution.

4 The way we're going to approach that, if I have  
5 anything to say about it in the budget solution, is, we must set  
6 very strict priorities, very clear priorities, about what we're  
7 going to protect. In my world, that's basic primary and  
8 preventive care in the Medi-Cal Program. We can't mess with  
9 that, because that's going to be the fundamental building block  
10 for whatever we create after the budget situation is settled.  
11 We may have to be very creative in finding new funding  
12 mechanisms.

13 My experience in looking at this problem is that this  
14 just going to require some more money, and we should define what  
15 we want, what we're prepared for, and then go after it.

16 SENATOR PETRIS: Have you talked to the Governor  
17 about that?

18 MR. RODRIGUEZ: No, sir. The Governor and I don't  
19 speak, except once.

20 There's a lot of people in between me and the  
21 Governor.

22 SENATOR PETRIS: Well, maybe you can pass the word.

23 He's made it very clear, forget about any new money,  
24 you know. And I understand the current situation, but there are  
25 basic needs that need to be met.

26 MR. RODRIGUEZ: I was on a panel with you one night,  
27 the Channel 13 thing, and a point you made, I think, is that  
28





1 there are efficiencies and money within the system that, if  
2 better allocated, could help fund this. You know, it doesn't  
3 have to all be new money.

4 If we're prepared to make some hard choices about  
5 what our priorities are, maybe what we don't need to have on  
6 every corner, I think we may find there's a whole ton of money  
7 within the health care system -- I don't just mean Medi-Cal; I  
8 don't mean the stuff that the State of California funds right  
9 now. But when you look at what Californians spend on health  
10 care, there is some real opportunities for reshaping the pie  
11 that, in my mind, mean more money. You brought it from  
12 somewhere else in the system.

13 SENATOR PETRIS: Well, that's what my bill does, and  
14 I'm not here --

15 MR. RODRIGUEZ: Well, I've heard you say that, too.

16 SENATOR PETRIS: -- to be an advocate of my bill, but  
17 it's clear we have over 1500 insurance carriers, separate  
18 entities. Each of them has ten or more plans. Tremendous  
19 duplication. And three major studies have shown we get an  
20 enormous saving if we go to a single-pay.

21 I would urge you to examine that, in view of the  
22 Governor's apparent absolute refusal to approve, or even look  
23 at, a single-pay system. He hasn't explained why he's opposed  
24 to it. The General Accounting Office study shows a savings of  
25 \$67 billion, just moving the paperwork, centralizing the  
26 paperwork.

27 The New England Journal of Medicine study shows \$83  
28



1 billion, based on 1987 figures, nationally, and updates that for  
2 1990 to \$135 billion, without cutting any doctors' fees, or  
3 hospital fees, but simply cutting down on the paper. That's an  
4 enormous savings.

5 It seems to me that the Governor has to be persuaded  
6 to a least examine those studies, and before he concludes  
7 finally that he just doesn't want to entertain any single-pay  
8 approach.

9 Okay. I have a lot of letters supporting your  
10 nomination, including people from the county where I live.  
11 Most, almost all, the complaints are from within your shop.

12 Now, that tells me, people dealing with you from the  
13 outside are happy, but some people closer to you, on a day-to-  
14 day basis, are the ones that are unhappy. I guess that's why we  
15 politicians are in trouble. Those that see us all the time  
16 through the press, at least, are unhappy.

17 Do you care to comment on that?

18 MR. RODRIGUEZ: I could comment at great length.

19 I don't want to get into a whole lot of detail,  
20 although I'd be happy to talk to anybody individually about the  
21 circumstances of -- of the letters that have come in from our  
22 own employees. I think that there's another side of those  
23 stories that needs to be told, and I'd be -- I'd welcome the  
24 opportunity to do that, but I don't think it's appropriate that  
25 those kind of things be --

26 SENATOR PETRIS: Well, maybe you can I can talk about  
27 it.  
28



1 MR. RODRIGUEZ: I'll be happy to, anytime you can.

2 SENATOR PETRIS: We've already talked about some of  
3 the problems.

4 Let me conclude with SB 127. Several of the  
5 complaints have been that people interested in that bill have  
6 had problems getting you to commit, and after committing, to sit  
7 down and really talk about it. They're accusing you of  
8 misstating the facts of the bill, and throwing up all kinds of  
9 obstacles.

10 Now, you're entitled to have an opinion on a bill.  
11 It's the style and manner that they're complaining about, coming  
12 up with new objections at a meeting that's supposed to consider  
13 old objections, a lot of changes, and so forth.

14 You don't need to comment on that unless you want to,  
15 but that is a serious complaint that's been made from more than  
16 one source.

17 MR. RODRIGUEZ: I recognize that, Senator. You and I  
18 have chatted about it.

19 SENATOR PETRIS: Yes.

20 MR. RODRIGUEZ: But I think, you know, I'm probably  
21 about 180 degree around on that issue. And unless the other  
22 Committee Members have additional questions, I won't get into it  
23 in great detail, but I disagree strongly with the points that  
24 were made by -- by that group.

25 I think also the letters that you have received from  
26 other providers would indicate that -- that the suggestion that  
27 I'm not accessible, or that I am not to be trusted, is -- is not  
28





1 the case. In fact, in the case of SB 127, when I met with the  
2 individual who -- who wrote the letter you're talking about, I  
3 think I made it clear that my position had been fairly  
4 consistent all along, and it was my view that this was a policy  
5 disagreement between he and I.

6 Nevertheless, a significant amount of work has been  
7 going on between the Department of Health Services and Health  
8 and Welfare Agency and Senator Russell's office in addressing  
9 the fundamental issues that underlied their concern in SB 127.  
10 This work was done by -- by Secretary Gould himself, by Dr. Coye  
11 herself, by me and my medical team.

12 And in fact, I got -- my doctor in San Bernardino get  
13 a letter from Dr. Potkin, who has been an individual who's been  
14 very critical of me, suggesting that we'd made some considerable  
15 progress in our relationships in resolving some of the  
16 underlying problems.

17 SENATOR PETRIS: How long ago was that?

18 MR. RODRIGUEZ: I can get the letter for you. I  
19 guess don't have it here. About six months ago, sir.

20 SENATOR PETRIS: That's all I have.

21 Thank you.

22 CHAIRMAN ROBERTI: Is there anyone else in the  
23 audience to testify?

24 Do I hear a motion?

25 SENATOR BEVERLY: Move recommendation of approval of  
26 the confirmation.

27 CHAIRMAN ROBERTI: Senator Beverly moves  
28



1 Mr. Rodriguez's confirmation be recommended to the Floor.

2 Secretary will call the roll.

3 SECRETARY WEBB: Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Beverly Aye.

6 Senator Mello.

7 SENATOR MELLO: Aye.

8 SECRETARY WEBB: Mello Aye.

9 Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye.

12 Senator Craven. Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 SECRETARY WEBB: Roberti Aye.

15 CHAIRMAN ROBERTI: The vote is four to zero;  
16 confirmation is recommended to the Floor.

17 MR. RODRIGUEZ: Thank you for your time.

18 CHAIRMAN ROBERTI: On the next two appointments, we  
19 are going to take testimony on Mr. Marz Garcia, Director of the  
20 Office of Administrative Law, and Mr. James M. Strock, Secretary  
21 of the California Environmental Protection Agency. We'll take  
22 Mr. Garcia first.

23 I don't intend to come to a vote on either one of  
24 them this afternoon.

25 We will break for five minutes.

26 I will be here for ten minutes more after that, then  
27 I have a doctor's appointment.  
28





1 Senator Petris, you will be presiding. But I don't  
2 intend to come to a vote on either one of them.

3 We'll break for five minutes.

4 [Thereupon a brief recess was taken.]

5 SENATOR PETRIS: The meeting will come to order.

6 Senator Roberti may not be back. I've been asked to  
7 proceed. We have a long way to go.

8 Senator Garcia, Director of the Office of  
9 Administrative Law.

10 MR. GARCIA: Senator Petris, Senator Beverly, Senator  
11 Mello, it's nice to be back.

12 SENATOR PETRIS: We always ask our appointees, and  
13 you've been through this before, I guess.

14 MR. GARCIA: Not as an appointee, Senator.

15 SENATOR PETRIS: Anyway, we ask them to tell us why  
16 in the world we should support the appointment, so you can give  
17 us a brief --

18 MR. GARCIA: Well, Senator, I haven't brought anyone  
19 here to give my background or recommendation, because I don't  
20 want to embarrass them. I'll do it myself.

21 I think that the reason you should support the  
22 appointment is because I'm qualified. I'm both a lawyer, I have  
23 a couple law degrees, and educationally, I'm an economist and a  
24 business person. I've been out in the business world.

25 And I've also been in government, and I understand  
26 the process and regulations.

27 We have a very difficult situation a OAL. We lost  
28



1 about half of our people this year because of budget cuts. I'm  
2 going to lose some more, but they have risen to the occasion.  
3 They -- it's become challenging for us, but there are excellent  
4 people, and I think that we are making some good changes over  
5 there. We're going to be able to handle the workload, if it  
6 doesn't greatly increase.

7  
8 What I have found is that by taking their suggestions  
9 and making some recommendations, and then getting feedback from  
10 them, that we have come up with a series of excellent solutions  
11 to a lot of the internal problems.

12 What that agency needs now more than anything else is  
13 leadership and commitment and good management, and actually,  
14 there, they really are the managers, and I just kind of oversee  
15 it and help them do things.

16 So, I think I'm an excellent appointee for this  
17 position, and probably lots of others, but this is the one I'm  
18 in, and I like it. I enjoy it, and I'd like to continue.

19 SENATOR PETRIS: We usually go into questions after  
20 the public has testified, but if any of the Members want to ask  
21 questions now, it's okay. I have one.

22 Can you define the mission of the Office of  
23 Administrative Law, very briefly?

24 MR. GARCIA: Yes.

25 In my own view, the primary mission is to protect the  
26 rights of the public to comment on regulations, and to protect  
27 the intent of the Legislature in the statutes.

28 I say that the major problem that we often have is



1 that agencies, in their zeal to do good, overstep their  
2 authority and the boundaries that were created in the statutes.  
3 So, I protect -- I think I protect the legislative intent and  
4 the public's right to comment.

5 SENATOR PETRIS: Now, are there any persons here  
6 desiring to testify in support of Mr. Garcia? All right.

7 Does anyone here desire to testify in opposition?  
8 Senator Garamendi.

9 We still call everybody "Senator". Commissioner  
10 Garamendi.

11 COMMISSIONER GARAMENDI: Senator Petris, Senator  
12 Beverly, Senator Mello, it's with considerable regret that I  
13 come before you today to ask you, in the strongest of terms, to  
14 reject this appointment.

15 What is at stake here is the -- is the public's  
16 belief in our governmental processes. In 1988, the public voted  
17 for a law that called for, among other things, a rollback of  
18 rates on their insurance, and also the implementation of a rate  
19 setting procedure, and several other matters. This was  
20 Proposition 103.

21 During the course of the ensuing three years, the  
22 insurance industry has made every effort possible to thwart the  
23 will of the people. In the last 18 months, we have set in  
24 process a series of procedures and rules and regulations to  
25 fully implement Proposition 103. That effort is basically  
26 embodied in a series of regulations which we have promulgated,  
27 and which we have sent to the Office of Administrative Law.  
28





1 Prior to the arrival of Mr. Garcia in that job, these  
2 regulations were adopted after review, after comment, after  
3 public hearing, usually as emergency regulations, and progress  
4 was being made.

5 What is at stake, and what you gentlemen are voting  
6 on in confirming or not confirming this individual, is more than  
7 \$2 billion of rollbacks that are owed to the public by the  
8 insurance industry. Mr. Garcia has consistently, at every  
9 opportunity, derailed the effort to provide those rollbacks and  
10 to meet the obligation of the law.

11 This has been done in a manner that is contrary to  
12 the intent of the law as written by the people of the State of  
13 California and enacted by their own vote. It is contrary to the  
14 clear instructions that he has in the Administrative Code to  
15 review the regulations. It is also contrary to the Governor's  
16 own explicit instructions to him.

17 For three consecutive times, we have brought to him  
18 emergency regulations. We sometime -- in the early stages, we  
19 modified those regulations at his request, and then he rejected  
20 them.

21 Everytime we get close to a rollback, everytime we  
22 get the process moving, Mr. Garcia steps forward and derails it.  
23 Most recently, emergency regulations that were twice before  
24 approved by the Governor, yesterday he derailed the process  
25 again by rejecting the emergency regulations that had twice  
26 previously been approved.

27 It comes at a particularly critical moment; a moment  
28



1 in which rebates are at hand. Just ten days ago, Mercury  
2 Insurance Company, recognizing that the rebates were a reality,  
3 that the law was clear and the regulations were equally clear,  
4 agreed to a \$45 million rebate for nearly 200,000 policy  
5 holders. We are in the course now of several administrative  
6 hearings, specifically Geico and State Farm, State Farm being  
7 the biggest insurance company in the State of California.

8 Today, as a result of Mr. Garcia's inappropriate and  
9 wrong-headed action, both of those administrative law cases are  
10 off calendar. It is, therefore, unknown what the result will be  
11 for the policy holders of these two companies and for others.

12 Furthermore, we are involved in private negotiations  
13 with other insurance companies that could very well result in  
14 additional agreements for rollbacks. As you might well be --  
15 you might well imagine, we have unable to reach those insurance  
16 companies to continue the negotiations since Mr. Garcia derailed  
17 the regulations yesterday.

18 All he needed to do was to allow the emergency  
19 regulations to continue.

20 Now, Proposition 103 is not the only issue at hand,  
21 and rollbacks are not the only issue at hand. We have other  
22 regulations in Proposition 103, the rate setting regulations,  
23 that are also jeopardized by Mr. Garcia.

24 I suppose you could like or dislike Proposition 103.  
25 Your views on that are your own.

26 But I would hope that you would dislike the  
27 fraudulent activities that rip off millions of Californians when  
28





1 they are exposed to unlicensed insurance companies selling  
2 products in the State of California. There's been a  
3 proliferation of these insurance companies. We are involved now  
4 in a major crisis of uninsured -- unlicensed insurance companies  
5 selling fraudulent and useless insurance products to the people  
6 of California.

7  
8 For nearly a year now, we have been attempting to  
9 write regulations, to clarify the power and the responsibilities  
10 and the law, with regard to unlicensed companies. All of our  
11 efforts to protect the public through the regulatory process  
12 have been derailed, destroyed, by Mr. Garcia.

13 Now, the question is yours. As the Senator Rules  
14 Committee, the question is yours. Do you want Proposition 103  
15 implemented? Do want the rollbacks? Do you want us to proceed  
16 to protect the public from the fraudulent activities that are  
17 occurring by unlicensed insurance companies?

18 If you do, you must vote to reject this man. He  
19 stands in the way of the implementation of Position 103, and  
20 stands in the way of our effort to rid this state of fraudulent  
21 insurance companies.

22 I urge you, when it comes time to vote, to reject  
23 this nomination.

24 Furthermore, I've given you a series of information  
25 pieces. The first is a blow-by-blow description of the  
26 disgraceful actions of the Office of Administrative Law in the  
27 way in which it has dealt with Proposition 103 before and after  
28 Mr. Garcia's arrival.



1 Prior to Mr. Garcia's arrival, if you'll look at this  
2 document called "MARZ GARCIA AND PROPOSITION 103: TEN MONTHS OF  
3 OBSTRUCTION", you will note, laid out here in the record, that  
4 the Office of Administrative Law routinely approved the previous  
5 Commissioner's emergency regulations, and regulations regarding  
6 103. After his arrival, he has taken the law into his own hand,  
7 into his own weird interpretation of what it might be, and has  
8 summarily derailed the process, despite the Governor's  
9 overruling him.

10 Not only do I ask you to vote no, I ask the Governor  
11 of the State of California to remove this man from office so  
12 that rebates can go forward. It's time to get this thing behind  
13 us.

14 We also included in this packet is a recent article,  
15 dated June 7th, from the L.A. Daily News, speaking of "The  
16 offshore Insurance Crisis," the unlicensed insurance companies  
17 that I spoke to a few moments ago.

18 Now, Mr. Garcia will undoubtedly say that our  
19 regulations do not allow the insurance companies an opportunity  
20 to comment. Baloney! They comment 'til the cows come home.  
21 They comment in volumes that stack tens of feet high, and fill  
22 cases and cases of boxes. There was plenty of opportunity to  
23 comment.

24 And not only can they comment, they can take my  
25 rulings on what their rebate liabilities are, and what their  
26 obligations may be under the rate setting, and go to court, and  
27 that is precisely what Twentieth Century is doing as we speak.  
28



1 And in fact, it may be argued in court within the next few days  
2 that the Twentieth Century case be thrown out because there are  
3 no regulations as a result of Mr. Garcia's action.

4 There's plenty of time for comment.

5 Mr. Garcia may also say that the courts are not  
6 clear. Gentlemen, the courts are quite clear.

7 This is a Court decision about my regulations,  
8 telling Mr. Garcia to -- excuse me, telling Twentieth Century  
9 that they had to go ahead. They had to complete the hearings,  
10 and there is also attached to this a ruling by the Appellate  
11 Court saying the same thing, that in fact emergency exists, and  
12 that they should go ahead.

13 Why, Mr. Garcia, you have derailed this is beyond my  
14 understanding. Why you consistently try to terminate  
15 Proposition 103, I don't understand.

16 But I want you out of the way. The people of  
17 California want their rebates. The Governor of the State of  
18 California should remove you, and if he doesn't, this body  
19 should.

20 SENATOR PETRIS: Any questions of Mr. Garamendi?

21 COMMISSIONER GARAMENDI: Thank you.

22 SENATOR PETRIS: Would you like to respond at this  
23 time?

24 FROM THE AUDIENCE: We'd like to make a statement in  
25 opposition at your pleasure.

26 SENATOR PETRIS: Let's give him a chance to respond  
27 while it's fresh in his mind. These things sometimes drag out a  
28





1 little bit, so we'll call on you very shortly.

2 MR. GARCIA: Yes, Senator Petris and Members.

3 I won't get into the legal problems with the file,  
4 but I will tell you that there's a very simple way to resolve  
5 this situation, and that is any agency, including the Department  
6 of Insurance, has the right to go ahead and ask the court for a  
7 Writ to force us to adopt the regulations.

8 And this is probably a very convenient time to do it,  
9 because the Twentieth Century case is pending now, and there is  
10 a judge that has been assigned by the State of California to  
11 hear the insurance issues. The regulations should go before  
12 that person, and then I think they will either uphold our legal  
13 point of view, or the Commissioner's point of view.

14 But that's a very simple way to do it. They have the  
15 resources. They have millions of dollars and legal talent, and  
16 they can do that.

17 We would welcome that. And that's also consistent  
18 with the Governor's decision when the Governor overruled OAL.  
19 It was not done on our legal merits. In fact, they pretty much  
20 agreed with us, but they said, "Let's -- I'm going to give you  
21 the emergency. You've been abusing the process, but I'm going  
22 to give you the emergency and to get it into court."

23 And the -- what happened in this case, specifically  
24 on Monday, is, they brought the same regulation back early.  
25 It's good for another week; it would have been good for another  
26 week, and it was really doomed to failure because they made no  
27 attempt to go through the administrative procedure process and  
28



1 make those regulations permanent.

2 We had, under the law, we had no option. Those  
3 regulations are invalid. We would -- I elected my discretion  
4 not to re-adopt those regulations on an emergency basis.

5 I would suggest to them that they now take us into  
6 court and get the situation resolved, and stop wasting  
7 everybody's time, embarrassing other people.

8 COMMISSIONER GARAMENDI: Senator, that is outright  
9 hogwash! In fact, the regulations are valid. There is a Court  
10 decision.

11 SENATOR PETRIS: I understand --

12 COMMISSIONER GARAMENDI: The regulations are valid --

13 SENATOR PETRIS: -- from Mr. Garamendi's --

14 COMMISSIONER GARAMENDI: -- and we need to go ahead.

15 What's happening here, what the people of California  
16 don't need is another lawsuit.

17 What they need to have is this process going forward.

18 Go to court. Spend more money on lawyers. We have  
19 seen over \$100 million spent by the insurance industry alone on  
20 lawyers trying to stop this.

21 SENATOR PETRIS: In a more lengthy statement than he  
22 just gave us, Mr. Garamendi goes into more detail. I remember  
23 he does cite at least one Court decision. I guess it's the one  
24 he has there.

25 And one of the claims is that in every one of the  
26 reasons that you cite, you seem to be a mouthpiece for the  
27 industry by echoing the same arguments they've made in court,  
28





1 and in hearings, involving the regulations.

2 MR. GARCIA: That --

3 SENATOR PETRIS: Is that just a coincidence?

4 MR. GARCIA: No, that's not true, Senator.

5 Some -- some of the comments that the industry makes  
6 we agree with, others we don't. And we don't use them in our  
7 analysis. But there are some that we agree with, some we don't.  
8 But that's all part of the public comment process. That's the  
9 only way that they can get into the record on an emergency  
10 basis, is that they write us comments on it.

11 This last file we got something, oh, about 70 pages  
12 worth of comments which the Insurance Commissioner chose not to  
13 respond to.

14 SENATOR PETRIS: Can you comment on the fraud,  
15 anti-fraud aspect? Mr. Garamendi says that last August, you  
16 disapproved regulations that had previously been approved by the  
17 Office to prevent surplus line brokers from steering  
18 unsuspecting drivers into unlicensed, not admitted insurance,  
19 rather than the assigned risk plan. It says:

20 "Every day, hundreds of California  
21 insurance policyholders seek to have  
22 their claims paid from unlicensed  
23 insurance companies only to discover  
24 that it is little more than a post  
25 office box somewhere in the  
26 Caribbean."

27 And he charges that's a direct result of your dumping these  
28



1 regulations, which are done pursuant to 103 on the anti-fraud  
2 aspect of the initiative.

3 MR. GARCIA: Senator, the regulations that I think  
4 you're referring to are surplus line broker regulations, and  
5 they're not really part of 103. It's a different statute.  
6

7 In the statutory scheme set up by the Legislature,  
8 when you have a noncompetitive market in the State of  
9 California, brokers can go out of state to secure insurance for  
10 their clients. And it is not a prior approval type of system.

11 The Department of Insurance tried to set up  
12 regulations that required prior approval, and that's not  
13 consistent with the law. That would have violated the law. So,  
14 we disapproved those regulations and told them, "You cannot set  
15 up a prior approval scheme."

16 And we're still working with them on trying to  
17 develop a system where they can control some of the fraud that's  
18 going on. I don't think that -- I don't know how extensive it  
19 is. But there are some insurance companies out there that are  
20 weak and that probably shouldn't be offering insurance in the  
21 State of California, and it is a problem. It should be  
22 addressed by the Legislature, but there are some things that can  
23 be done, and we're working with them and have been for weeks on  
24 trying to get through regulations that are consistent with the  
25 law to control the problem.

26 SENATOR PETRIS: What is a noncompetitive market?

27 MR. GARCIA: Well, you have high risk drivers. Very  
28 often they can't get insurance; no one wants to insure them, so



1 they can go into the assigned risk pool, or something else, or  
2 they can go out of the state.

3 So, when you have half or more of the insurance  
4 companies in the State of California not willing to provide that  
5 type of insurance, then a broker is eligible to go out of state  
6 and try to find that type of insurance for them. They call that  
7 a noncompetitive market.

8 SENATOR PETRIS: Mr. Garamendi.

9 COMMISSIONER GARAMENDI: The fundamental point that I  
10 think this Committee needs to be aware of is that nowhere in the  
11 Administrative Code is the judgment of a department allowed to  
12 be substituted by the Office of Administrative Law. Their job  
13 is different.

14 And I would point out to Mr. Garcia that he does not  
15 know the law. The law that he is referring is the surplus line  
16 law that was enacted in 1937.

17 A few things have intervened since 1937, not the  
18 least of which is Proposition 103, one section of which says  
19 "take all comers", specifically requiring the auto insurance  
20 companies to cover everybody who may want to apply and who is a  
21 good driver.

22 Secondly, a second law was the enactment of the  
23 assigned risk program, which is specifically set up to provide a  
24 residual market for those who cannot get insurance in the normal  
25 marketplace. There is, in fact, in auto insurance available  
26 coverage from either of those two.

27 Mr. Garcia has simply decided in his own judgment,  
28





1 based upon a faulty knowledge of the law, and some tortured  
2 logic, that insurance consumers should not be protected by the  
3 licensing laws of the State of California. In other words, it's  
4 perfectly fine in a free marketplace for fraud to exist.

5 We reject that logic. We think he should be rejected  
6 because he enunciates that logic.

7 It is also clear that the regulations that we have  
8 promulgated are not prior approval regulations, but as specified  
9 by the 1937 law, they do allow us to evaluate the financial  
10 stability, reputation, integrity of unlicensed insurers. That's  
11 what the law says. And that happens to be Insurance Code  
12 Section 1765.1.

13 SENATOR PETRIS: Thank you.

14 You wanted to testify? Do you want to come forward?

15 MR. ROSENFELD: Thank you, Mr. Chairman, Members of  
16 the Committee.

17 My name is Harvey Rosenfield. I'm the Chairman of  
18 Voter Revolt, the grassroots organization which sponsored  
19 Proposition 103.

20 With me today is Ed Howard. He's an attorney with  
21 the firm of Hall and Phillips. That is the law firm which has  
22 assisted us in the implementation of Proposition 103, including  
23 fighting over 67 lawsuits, and the endless delays that have been  
24 introduced by rogue administrative agencies intruding into the  
25 process of the implementation of the initiative.

26 Mr. Howard's available if you wish to hear a more  
27 detailed presentation of the points that Mr. Garcia has raised  
28



1 in the past, and in his decision yesterday, and the actual  
2 validity of them and response to them.

3  
4 Three and a half years ago, Proposition 103 was  
5 passed by the voters. It was a fair and square election. The  
6 insurance industry spent \$80 million; they lost. We relied on a  
7 lot of volunteers; we won.

8 Since 103 passed, the initiative has basically been  
9 the subject of a thievery by unelected bureaucrats working with  
10 the insurance industry to delay implementation of the  
11 initiative, in the process disgracing state government, and  
12 undermining the voters' respect for democracy.

13 And whether you care, whether you agree or disagree  
14 with Proposition 103, everybody in this building knows that the  
15 voters are disenchanted with the democratic institutions in our  
16 state and in our nation, and what's happened to Prop. 103 for  
17 many of them is emblematic of why.

18 Now, the sabotage that's been conducted against  
19 Proposition 103 began with the prior Insurance Commissioner, who  
20 was an unelected appointed official, who, through working with  
21 the industry, and encouraging lawsuits, managed to essentially  
22 delay any implementation of the measure whatsoever for two  
23 years.

24 Ironically, that worked to our advantage, because in  
25 their wisdom, the voters, as part of Proposition 103,  
26 established an elected Insurance Commissioner who the voters  
27 knew would get the job done, because the Commissioner would be  
28 accountable directly to the public. And in fact, because





1 Commissioner Gillespie had done absolutely nothing to move  
2 Proposition 103 forward, Commissioner Garamendi was able to take  
3 office and begin from scratch. And although we have some  
4 substantial disagreements with him, we don't think his  
5 regulations are perfect from the consumer's perspective, he has  
6 done the work that the public expected would be done when the  
7 initiative was passed, and when they put him in office.

8  
9 So, when Roxani Gillespie's gone, and the insurance  
10 industry loses their person in state government who is  
11 protecting them from Proposition 103's implementation, what  
12 happens? All of a sudden, an obscure bureaucrat named Marz  
13 Garcia pops out of the woodwork and decides to reject numerous  
14 regulations which are needed to implement the first provision of  
15 Proposition 103, the rollbacks. Maybe its most controversial  
16 provision, but just one of dozens of provisions, all of which  
17 are going to need regulations, and approval by OAL, as long as  
18 OAL exists, and then implementation.

19 I was astonished to hear Mr. Garcia just now suggest  
20 that his mission was, number one, to protect the right of the  
21 public to comment, and number two, to protect the intention of  
22 the Legislature.

23 The public's right to comment -- first of all, the  
24 public commented in the election. And their right to comment has  
25 been trammled, and their right to a speedy enforcement of the  
26 law has been destroyed by the insurance industry's ability to  
27 influence unelected officials in state government, like  
28 Mr. Garcia, with the net result that 103 still isn't



1 implemented.

2           And yesterday's decision, if permitted to maintain  
3 its viability, if some action is not taken, Proposition 103 will  
4 not be implemented for two or more years if Mr. Garcia's  
5 decision of yesterday stands.

6           The insurance industry, by contrast, is really who  
7 Mr. Garcia is protecting, because the tens and thousands of  
8 pages, and the hundreds or millions of dollars they have spent,  
9 they have overwhelmed the comment process. It's hard to imagine  
10 that any attorney, or lobbyist, or expert in the insurance  
11 industry would have anything more to say about Prop. 103. It's  
12 all been said by them already.

13           As far as protecting the intent of the Legislature,  
14 how can anybody seriously suggest to you, Members of the Senate,  
15 that they are trying to protect the intent of the Legislature,  
16 when they are, in essence, overriding the law that the public  
17 enacted, overruling the Insurance Commissioner the public  
18 elected to implement that law, and turning it on its face so  
19 that it cannot go into effect?

20           I think that is a disgraceful hypocrisy to say on the  
21 record, with a reporter here, that that is what his mission is.  
22 Is that the double-speak that we have arrived at this year?

23           Well, we have looked very closely at Mr. Garcia's  
24 statements and -- behind his decisions. As I mentioned, our  
25 attorney is available if you would like to hear a much more  
26 detailed and legal analysis of the basis for those decisions, or  
27 lack thereof.  
28



1           But it struck me that, at a recent hearing, held by  
2 Senator Torres, an oversight hearing in Los Angeles several  
3 months ago on this -- on the implementation of Proposition 103,  
4 we actually got the truth about what's in Mr. Garcia's mind when  
5 he issues these decisions to stop 103 in its tracks.

6           Under intense questioning from Senator Torres,  
7 Mr. Garcia blurted out that the regulations, in his view, were  
8 confiscatory. Now confiscatory is the code word, the legal  
9 term, that the insurance industry has been using since 103  
10 passed for the notion that they cannot afford the rollbacks  
11 because it deprives them of their constitutional right to a fair  
12 rate of return.

13           Here, in a nutshell, is the issue. Here is the  
14 unlawful action of Mr. Garcia. He has no authority to interpret  
15 the United States Constitution, or the California Constitution,  
16 or even Proposition 103, from a policy perspective.

17           His job is to make sure that regulations that come  
18 out of administrative agencies comply with the procedural  
19 requirements of state law.

20           By saying, blurting out, that his concern was that  
21 these regulations were confiscatory, he was substituting his  
22 policy judgment -- upon which I think he has precious little  
23 information to base it -- for the Commissioner's decision, and  
24 then for the court's decision.

25           103 took the responsibility for insurance policy out  
26 of the hands of an unelected official of government and put it  
27 into the hands of the Insurance Commissioner, who is now  
28





1 elected. Mr. Garcia has created a special court of insurance  
2 industry appeals for those companies that are still unwilling to  
3 cooperate and comply with the law that's on the books.

4 The industry knows that it will not prevail against  
5 Proposition 103. It lost at the ballot box; it lost in the  
6 courts so far. Its profits were up 35 percent last year, and it  
7 knows that no one is going to accept its claim that it cannot  
8 afford to rollback its rates, and that rates should not be  
9 regulated.

10 So, what they have done instead is resorted to  
11 bureaucratic sabotage to evade the requirements of the law.

12 I would like to say one thing about this process. I  
13 was very disturbed to learn that there would be no up or down  
14 vote today on this nomination, on this appointment.

15 As you are all aware, the public is very disenchanted  
16 with its democratic institutions. And to be fair, since the  
17 passage of Prop. 103, there was very little that the Legislature  
18 could do to advance the implementation of the initiative,  
19 because it was in the administrative process.

20 Today, however, you have an opportunity to do  
21 something. You have an opportunity to take the single  
22 individual who is now in state government blocking Proposition  
23 103's rollbacks, and believe it, the rest of the regulations  
24 that will come to the OAL after the rollback, and you can send  
25 him packing. You can remove him from office and send the  
26 Governor a message that somebody with more of a commitment to  
27 Proposition 103 should be in his place.  
28



1           We are -- nobody wants to offend the Governor.

2 Nobody wants to humiliate him. Everybody recognizes that there  
3 are delicate negotiations going on for the budget.  
4

5           But the fact remains that the motorists of California  
6 did not cause the budget crisis, and it is not fair to balance  
7 the budget, or to delay the rollbacks that they're entitled to,  
8 and to ensure that government works in their favor, because of  
9 these budget negotiations.

10          SENATOR PETRIS: Just a second.

11          Let me point out to you that those same motorists  
12 elected the Governor, and we're having our battles with the  
13 Governor on the budget.

14          MR. ROSENFELD: I understand.

15          The Governor has made this appointment. Mr. Garcia  
16 is the Governor's albatross.

17          SENATOR PETRIS: The Governor is their appointment,  
18 and I don't want them to dodge that responsibility and dump on  
19 us, like they do everyday.

20          MR. ROSENFELD: Absolutely. I understand that,  
21 Senator.

22          My point is that the issue of Proposition 103's  
23 implementation is a matter that's separate from the budget  
24 process. And the voters are astonished that, three and a half  
25 years later, so little has been accomplished because of the  
26 insurance industry's ability to manipulate individuals within  
27 the state Executive Branch. For those voters, they are entitled  
28 to rapid disposition in a clear situation like this, in which an





1 individual is abusing his authority, is misusing his power. An  
2 employee of government is wasting taxpayer dollars, is even  
3 defying some of the decisions of the courts, which have  
4 explicitly addressed the arguments that Mr. Garcia has put forth  
5 which the industry issued for him, his decisions, and the courts  
6 have rejected them.

7 I ask you not just for the purpose of allowing  
8 Proposition 103 to go forward, but more importantly, to give  
9 them a renewed sense of faith in the integrity of the democratic  
10 institutions of this state, that you dispose of this nomination  
11 rapidly by rejecting it.

12 That concludes my comments. If you'd like it, if it  
13 would be useful to have our counsel go through the technical  
14 points of the decision issued yesterday, we'd be glad to have  
15 it.

16 SENATOR PETRIS: I think that'll be helpful, but  
17 first I want to ask if any of the Members have questions of you.

18 SENATOR MELLO: I just want to say a couple things.

19 The demands, expectations, for the rollback have not  
20 gone away. Every weekend, when I'm home, I get asked that by  
21 many persons, and I go to Commissioner Garamendi, asking about  
22 the rollback. At one time I was told the check is in the mail.  
23 After all these delays, the mail has been delayed.

24 The people up there know and want and expect that  
25 rollback as expeditiously as possible.

26 When Mr. Garcia said the solution is simple, about  
27 ten minutes ago, they can just go to court and get a writ, the  
28



1 thing that people are most disinclined to see is government  
2 suing government. Who pays the bills?

3 The taxpayers expect a rollback and are going to be  
4 pushing for it. I think we ought to be able to resolve our  
5 issues without putting one branch of government suing another  
6 branch, spending the taxpayers' money.

7 The other thing, it's highly embarrassing for Mr.  
8 Garcia, his office, to be overruled by the Governor on two  
9 occasions or three.

10 MR. ROSENFELD: Two occasions.

11 SENATOR MELLO: It's written by an administrative law  
12 judge, as I understand this.

13 It was, I think, Speaker McCarthy, Leo McCarthy, who  
14 drafted this bill because they were having so many problems with  
15 departments going against the intent of the Legislature. They  
16 were acting differently than implied by the legislation.

17 This bill was drafted, and I supported it, because I  
18 thought there ought to be a branch of government that interprets  
19 the way the Legislature and the Governor, in signing the law,  
20 expected it could be implemented. That's the reason for it.

21 I think Mr. Garcia, having been overruled by his own  
22 Governor, has gone beyond the interpretation, using his opinion  
23 instead of that of the law or the administration. I don't know.

24 But I just want to say, people are still expecting  
25 and demanding their rollbacks from 103, that they voted it in.  
26 They expect that money to be coming forthwith.

27 That's something I can't understand, how those delays  
28



1 are trying to wear down insurance companies. They're wearing  
2 down the government by filing all of those legal actions, and  
3 they may have the help of the Director of the Office of  
4 Administrative Law assist them along the way.

5           It's possible -- you said two to three weeks, but my  
6 guess, Mr. Commissioner, that's wishful thinking. It might be  
7 ten years, or twenty, or never.

8           MR. ROSENFELD: Senator, I don't think it'll be  
9 never.

10           I can tell you that we're -- there's enough, as you  
11 describe it, public support for it. We're committed to it. We  
12 are always going to have a Commissioner who, for political  
13 reasons, if no other reasons, has to make it happen. And the  
14 law will prevail.

15           But we certainly can't afford these kinds of delays.

16           I neglected to state one more thing. In January of  
17 this year, after Mr. Garcia issued his last decision blocking  
18 rollback regulations, we filed a Public Records Act request with  
19 both the Governor's Office and Mr. Garcia's office. The  
20 Governor's Office refused to provide any records of contacts or  
21 communications with the insurance industry. But Mr. Garcia's  
22 office did comply with the Public Records Act, and these are  
23 copies of hundreds of communications, back and forth, from  
24 Mr. Garcia's office with every conceivable attorney or lawyer  
25 for the insurance industry.

26           This is a record of the kind of influence that exists  
27 in this issue. Of course, as Mr. Garamendi suggested, there are  
28





1 literally tons and tons of insurance industry comments that are  
2 behind this.

3 May I ask our counsel to come forward?

4 MR. GARCIA: Can I take a moment to respond to  
5 Senator Mello?

6 One of the problems of the Office of Administrative  
7 Law is that we are trapped by the law. We have to follow the  
8 statutes.

9 The Governor does not. That's in the law. The  
10 Governor did overrule our decision.

11 If you read the decision that the Governor made, he  
12 did not disagree with us on the legal merits. And he agreed  
13 also that they were an abuse of the emergency process, but he  
14 said he was going to overrule us simply to get the case before  
15 the judiciary, because we couldn't figure out any way else to  
16 resolve the dispute which was holding up the rebates.

17 So, we are trapped by the law; the Governor's Office  
18 is not.

19 And I'd like to make --

20 SENATOR MELLO: Let me ask you a question, then.

21 Mr. Garamendi also showed a court order that, I  
22 guess, overruled you.

23 MR. GARCIA: I don't think that is an accurate  
24 reading of that, that item, because we're not aware of it. If  
25 we were involved, they would have told us that. I think that  
26 that has to do with whether or not insurance company had to  
27 proceed under the regulations, and it was directed at a  
28



1 different party. I don't think it had anything to do with us.

2 SENATOR MELLO: He represented that, apparently.

3 Mr. Chairman, can we ask Mr. Garamendi --

4 MR. GARCIA: I'd like to see some of the statements,  
5 and maybe then we can respond to that.

6 The other two points I'd like to make, one, I did not  
7 support the evidence of the insurance companies in front of  
8 Senator Torres that they are entitled to fair and reasonable  
9 return. I was doing -- paraphrasing the Cal Farm decision,  
10 which said rate applicants should be allowed to introduce  
11 evidence that demonstrates whether or not the returns that  
12 they're going to be allowed are fair and reasonable. I did not  
13 say anything about whether the regulations allowed them or not.

14 The last point I'd like to make is that  
15 Mr. Rosenfield was welcome to come to the office and take all of  
16 these. And this is -- what you see here really is evidence of  
17 what happens when you issue an emergency regulation. The public  
18 has not had an adequate opportunity to comment. The phones  
19 start ringing off the hook, if it's controversial. You get  
20 hundreds of telephone calls. They're essentially the reference  
21 attorney, and they're asking what is going on, and how can we  
22 get our input in. You know, when is this thing going to be  
23 decided. That doesn't -- what that represents is lots of calls,  
24 maybe on this issue and maybe not.

25 SENATOR PETRIS: Well, Mr. Garamendi here, in his  
26 statement, says that after he gave notice of intent to scrap the  
27 existing regulations and issued his own rules to expedite, you  
28





1 know, the rollback, over the next nine months, he held public  
2 hearings, took over 50,000 pages of comments, responded in  
3 writing to all comments, and then filed the regulations on  
4 August 2nd.

5 So, it seems that there is a voluminous  
6 participation, to the tune of at least in writing of 50,000  
7 pages of comments.

8 MR. GARCIA: Yes, Senator, there is, and he delivered  
9 26 cartons to our office. And we spent the month that we were  
10 obligated to review them, and we came up with significant  
11 deficiencies, legal problems with the regulations, and we  
12 disapproved them.

13 They then turned around and immediately issued an  
14 emergency regulation, which largely was the same as what had  
15 just gone through. And that is -- and that's the case in which  
16 the Governor overruled us, because it became apparent that we  
17 were locked in a legal debate that was not going to get resolved  
18 administratively, so the Governor overruled it for the sole  
19 purpose of getting this before the judiciary.

20 SENATOR PETRIS: Now, we have a legal --

21 SENATOR MELLO: Mr. Chairman, may I have  
22 Mr. Garamendi's response to the lawsuit, whether or not that was  
23 overruled?

24 COMMISSIONER GARAMENDI: There are -- there's no end  
25 to the ways that these legal issues can confuse even careful and  
26 knowledgeable observers.

27 There are a couple of things that need to be clearly  
28



1 understood. Mr. Garcia is currently alleging that these  
2 regulations should be rejected because they are -- because there  
3 was no opportunity for comment.

4 I don't know how to tell you in more straightforward  
5 language, that just isn't the case. There is more than enough  
6 opportunity for people to comment. He cited that himself by  
7 saying the phones were ringing off the hook; he's received all  
8 kinds -- I'd like to know who was calling. I don't think it was  
9 the consumers. But I know it's the insurance companies. He's  
10 receiving comment.

11 Secondly, and that's just not the case. There's  
12 plenty of opportunity for comment on the regulations, the  
13 emergency regulations themselves, as well as on our actions, and  
14 we've spoken to that. That the earlier rejection of the  
15 regulations, the emergency regulations, was based on the  
16 allegation there wasn't an emergency.

17 The Governor didn't see it that way, and he overruled  
18 Mr. Garcia. That issue was taken to the Superior Court by, and  
19 in a decision issued December 13th, 1991, by Judge Janavs, she  
20 said in summary, and I can hand you the whole thing here:

21 "Again, as stated above, this Court  
22 finds the Commissioner's findings  
23 are credible statements of genuine  
24 emergency."

25 She found that there was indeed a credible reason for  
26 us to issue emergency regs. Furthermore, that was then appealed  
27 to the Appellate Court in Los Angeles. And the Court said:  
28



1 "The court has read and considered  
2 the 'application for emergency  
3 ruling on applicability of CCP  
4 Section 1094.5(g) and the request  
5 for immediate stay" filed herein by  
6 appellants December 17th, 1991, and  
7 the petition for the writ of  
8 supersedeas filed December 18, 1991.  
9 The application and petition are  
10 denied."

11 In other words, the Appellate Court agreed with Judge  
12 Janavs; there was an emergency, and there was just cause to go  
13 ahead with emergency regs.

14 All of that is on the record. All of that is in  
15 place, and we can go through in detail. You can have it all.

16 The fact of the matter is this. Mr. Garcia, through  
17 his power, is stopping our ability and our efforts to proceed  
18 with the hearings, to proceed with the process of getting the  
19 rebates to the people of California. He has derailed this.

20 The amount of time necessary to get past this latest  
21 derailment is unknown, but it is surely going to be some time.  
22 He has been in office now since August. We have been delayed a  
23 full 50 percent. In other words, three and a half, almost four,  
24 months now as a result of his actions and the necessity of  
25 having to go to court, having to go to the Governor, having to  
26 go through the process. We have won every single time. We'll  
27 win again.  
28





1 But the people of California won't get their rebates  
2 because of this man, because of the Governor's appointee.  
3 That's the bottom line.

4 If he has his way, they'll never get their rebates,  
5 and they'll never see the implementation of Proposition 103.  
6 And Lord knows, they also won't see the implementation of laws  
7 and regulations to prevent them -- to protect them from  
8 fraudulent companies that are out there, ripping them off today.

9 This man's got to go! If the people of California  
10 are going to see their law implemented, this man has got to go!

11 And it's the Senate's responsibility, because the  
12 Governor obviously won't stand up to the bar and take the  
13 responsibility on himself to fire him.

14 SENATOR PETRIS: Now, would you clarify a couple of  
15 the legal issues that have been the subject of controversy here,  
16 of dispute?

17 MR. HOWARD: Certainly, Senator.

18 SENATOR PETRIS: Will you give us your name?

19 My name is Edward Howard. I am an attorney with the  
20 law firm of Hall and Phillips. I represent Voter Revolt in the  
21 Proposition 103 rebate proceedings. I was counsel for Voter  
22 Revolt, for example, in the Twentieth Century decision and the  
23 entire hearing attendant to that case.

24 Earlier, Commissioner Garamendi referred to the  
25 Office of Administrative Law's actions as inappropriate. They  
26 are worse than that. They are unlawful.

27 Government Code 11340.1 specifically states that the  
28



1 OAL cannot substitute its judgment as expressed in the  
2 substantive content of the regulations for the judgment of its  
3 own self.

4 Basically what that means is that if there is a  
5 judgment call involved in the substance of the regulations, tie  
6 goes to the Commissioner, the regulatory body. That is the law.

7 And yet, three very simple facts demonstrate how the  
8 Office of Administrative Law, under Marz Garcia, has substituted  
9 unlawfully its own judgment about the substantive content of  
10 these rebate regulations for the judgment of itself.

11 First, OAL has repeatedly stated that its major  
12 problem with the Commissioner's rebate regulations is that they  
13 do not give the insurer a right to prove that a rate is  
14 unconstitutional.

15 I was involved in the Twentieth Century case. That  
16 case was -- that issue was squarely presented before the  
17 administrative law judge. The briefs in that case addressing  
18 those issues are, by the Commissioner and the Twentieth Century  
19 Insurance, are over a hundred pages long. In her 200-page  
20 decision, she squarely addressed that issue and disagreed with  
21 the OAL and the insurers on every count.

22 Thus, we have the fact that the OAL -- we have  
23 evidence by this fact that the OAL has unlawfully substituted  
24 its own judgment for that of the Commissioner's because the  
25 OAL's decision is at odds with that of a qualified  
26 administrative law judge.

27 Second fact. The OAL states over and over in its  
28





1 rejections of the Commissioner's rebate regulations the case of  
2 Cal Farm v. Deukmejian -- that was the California Supreme Court  
3 case that upheld Proposition 103, and specifically the rebate  
4 section of Proposition 103 -- clearly, according to the OAL,  
5 clearly demands that the regulations be disapproved of.  
6

7 Again, this was a central question in Governor  
8 Wilson's last decision to overrule the Office of Administrative  
9 Law last time. And although, as the Office of -- as Mr. Garcia  
10 stated, he agreed with much of the analysis in the Office of  
11 Administrative Law's decision, he said this:

12 "After Cal Farm, there is  
13 considerable doubt ..."

14 the Governor wrote,

15 "about whether or not the rebate  
16 part of Proposition 103, about what  
17 it can constitutionally accomplish  
18 and how. But a close reading ..."

19 according to the Governor,

20 "of the Cal Farm case seems to tip  
21 the balance to the Office of  
22 Administrative  
23 Law."

24 It flies in the face of the Office of Administrative  
25 Law's statement that the Cal Farm case clearly supports its  
26 position. It does not.

27 And remember, the law states that if there is a  
28 judgment call, tie goes to the Commissioner.



1           Thus, we have a second fact, indicating that the OAL  
2 has unlawfully substituted its own judgment for the  
3 Commissioner's. That fact comes by virtue of the fact that it  
4 is -- that the OAL is contradicted by Governor Wilson himself on  
5 what the Cal Farm case says.

6           Finally, as alluded to by Commissioner Garamendi, the  
7 Office of Administrative Law has consistently stated that the  
8 statements of emergency supporting issuance of emergency  
9 regulations by the Commissioner are invalid.

10           Again, this was the central question, a central  
11 question, heard in the case in Los Angeles before Judge Janavs  
12 about which Commissioner Garamendi has alluded to. Superior  
13 Court Judge Janavs specifically held -- knowing that she is  
14 supposed to defer to the expertise of the Commissioner under the  
15 law, unlike Mr. Garcia, who seems to not understand that the  
16 Government Code applies to him -- she specifically stated that  
17 the Commissioner had put forth a credible statement of  
18 emergency.

19           Again, a third fact indicating that the Office of  
20 Administrative Law is substituting its own judgment unlawfully  
21 for that of the Commissioner.

22           Judge Janavs, Governor Wilson, administrative law  
23 judge Elizabeth Port and Commissioner John Garamendi all  
24 disagree with the analysis of the Office of Administrative Law  
25 in now three times rejecting these regulations.

26           This clearly demonstrates that the Office of  
27 Administrative Law is substituting its own legal judgment for  
28



1 that of the Commissioner's, the Governor's, Judge Janavs', and  
2 the administrative law judge Port's decisions. His decisions  
3 are, therefore, unlawful.

4 I would like to bring up an additional point which is  
5 very disturbing to me.

6 When the -- when the Office of Administrative Law,  
7 the last go-around, disapproved of the regulations, Commissioner  
8 Garamendi appealed, and the Office of Administrative Law replied  
9 to that appeal. And it said over and over in that decision that  
10 there was no mechanism, none, for an insurer to prove in these  
11 hearings that a rate as applied to it is unconstitutionally  
12 confiscatory. That is false.

13 I will read to you from Section 2646.4(e) of the  
14 regulations, quote:

15 "The administrative law judge shall  
16 ..."

17 no discretion,

18 "shall admit evidence he or she  
19 finds relevant to the determination  
20 of the minimum nonconfiscatory rate,  
21 whether or not such evidence is  
22 specifically contemplated by the  
23 regulations."

24 This regulation appears nowhere. It is intentionally  
25 omitted from Mr. Garcia's reply.

26 In short, it is crystal clear that we have an Office  
27 of Administrative Law under Marz Garcia who has decided, for  
28





1 whatever reason, to second-guess the policy judgments of the  
2 Commissioner. That is unlawful.

3 I'm anxious to answer any questions you may have.

4 SENATOR PETRIS: Thank you.

5 Any questions?

6 So you want to comment? Is this your counsel?

7 MR. GARCIA: Yes, and he handled the case.

8 SENATOR PETRIS: Why do I have a hunch he's going to  
9 disagree?

10 [Laughter.]

11 SENATOR PETRIS: Okay, go ahead, sir.

12 MR. McNAMER: Senator Petris and Committee Members,  
13 my name is Michael McNamer. I'm a Senior Staff Counsel at the  
14 Office of Administrative Law.

15 I have been with the Office for ten years. I am not  
16 a political appointee.

17 It has been my job over those past ten years to  
18 review rule makings submitted by all of the various state  
19 agencies to implement the laws passed by this body. And I am  
20 very conscientious about the job of the Office and the role of  
21 the Office in not substituting its judgment for that of the  
22 Commissioner.

23 I was interested to hear Counsel mention my phrase,  
24 that I have used in these decisions, that the tie goes to the  
25 runner.

26 I have made every effort in advising Director Garcia  
27 that -- to very clearly keep in mind the directive from the  
28



1 Legislature to not substitute the judgment of the Office of  
2 Administrative Law for that of the rule making agency. After  
3 all, it is the rule making agency that has been given the  
4 discretion to implement, interpret, or make specific the  
5 statutes that they are administering or enforcing.

6 So, I have, in my own mind, a clear picture which has  
7 been developed over ten years of experience on the issue of  
8 substitution of judgment.

9 It's interesting for me to hear -- I have to admit  
10 that I am somewhat uncomfortable in this political setting,  
11 because over at the Office of Administrative Law, we review the  
12 records that are submitted to us, and we are not, you know, at  
13 play in the fields of politics, as it were. We don't experience  
14 the dynamics of the political pushing and shoving in the attempt  
15 to develop policies.

16 So, we are limited to the rule making record. We  
17 look at the materials that are submitted to us, and we make --  
18 we call them as we see them based upon the record, and the  
19 statutes that we have to work with, and the -- and the  
20 indications from the courts as to what the statutes mean.

21 I can give you my personal assurance that that was  
22 the kind of advice that was given to Director Garcia in --  
23 interestingly enough, I handled both of the cases that  
24 Commissioner Garamendi's concerned about, both the surplus lines  
25 case, and the Proposition 103 cases that are before you here.  
26 And I can assure you that the advice given was based on a solid  
27 reading of the law, and -- and it's kind of odd to see the spin  
28





1 that begins to appear on a decision from the Office of  
2 Administrative Law once its been issued.

3  
4 And I would suggest to the Committee that it should  
5 cut away, kind of, all the falderal if it is concerned about the  
6 value of the decisions and actually look at our decisions that  
7 we have issued in these matters. All those decisions are  
8 published, and we write them, explaining in a significant  
9 detail the basis upon which we -- the decision was reached. And  
10 I think that in these cases, we have articulated those reasons.  
11 We have articulated responsibly what the Cal Farm decision would  
12 require.

13 I think that the Governor, when he looked at our  
14 analysis, very clearly said, without question, no matter what  
15 the people who want to put a spin on it say, that if he were in  
16 the same position as the Director of the Office of  
17 Administrative Law, his decision would have been the same.

18 Now --

19 SENATOR PETRIS: Is that on the emergency regulation  
20 issue?

21 MR. McNAMER: That was -- yes, Senator Petris.

22 SENATOR PETRIS: Why did he overrule it?

23 MR. McNAMER: He said that he overruled us -- he said  
24 that he thought that his powers were somewhat different than the  
25 Office of Administrative Law. He was not limited to an  
26 application of the standards that we apply: authority,  
27 reference, consistency, clarity, nonduplication. He could -- he  
28 could bring in the political dimension that the Office could



1 not. And exercising that dimension in this case, he said that I  
2 don't think, in essence, that this decision is going to be  
3 resolved at the administrative level, and I don't think that  
4 there's anything that I can do to resolve this issue. That  
5 there are serious legal issues here that have to be addressed  
6 finally and certainly by a court in a fashion that will allow  
7 this thing to move forward.

8 The Governor based his decision on attempting to move  
9 the Proposition 103 forward by getting a quick resolution of  
10 these issues in court, and --

11 SENATOR PETRIS: Is that in writing?

12 MR. McNAMER: Yes, it is. I, as a matter of fact,  
13 can provide the the Committee with a copy of his decision, which  
14 clearly says that, yes.

15 SENATOR PETRIS: To be more specific, as I understand  
16 it, the issue on the first go-around was whether or not  
17 emergency existed under the statute for an immediate expediting  
18 of that provision.

19 MR. McNAMER: It's not --

20 SENATOR PETRIS: This is as I understand it --

21 MR. McNAMER: Can I sketch the procedural history  
22 very quickly?

23 SENATOR PETRIS: Yes.

24 MR. McNAMER: What happened was, the regulations of  
25 the Commissioner were originally noticed in January of 1991.

26 In August of 1991, the Commissioner came in with an  
27 emergency filing that was approved by the Office of  
28



1 Administrative Law. There were concerns about it, but it was  
2 approved by the Office of Administrative Law on an emergency  
3 basis.

4 SENATOR PETRIS: Who was the Director?

5 MR. McNAMER: I think that that was actually in the  
6 time when there was an interim director serving, if memory  
7 serves me. I could verify that for you, but I believe that that  
8 -- that it was done on an interim basis by an interim director.

9 Then Director Garcia came in. Shortly after that,  
10 the Commissioner filed a companion set of emergency regulations  
11 that involved generic determinations that he had made in a  
12 consolidated adjudication proceeding, and the Office, under  
13 Director Garcia's decision making power, decided that there was  
14 no emergency demonstrated.

15 That was the first -- I believe the first decision in  
16 which Director Garcia decided that there was no emergency  
17 demonstrated.

18 SENATOR PETRIS: Was that your decision as Counsel?

19 MR. McNAMER: That was not my decision, but I --

20 SENATOR PETRIS: Was that your recommendation?

21 MR. McNAMER: That was not my -- I was not the  
22 reviewing attorney that handled that matter, but --

23 SENATOR PETRIS: Who was? Is he here?

24 MR. McNAMER: No, it's a she.

25 SENATOR PETRIS: Is she here?

26 MR. McNAMER: And she is not present in the room.

27 SENATOR PETRIS: Okay.  
28





1 MR. McNAMER: But I will tell you this, that -- that  
2 that close scrutiny of emergency regulations that Director  
3 Garcia gave to that package was given to every other filing of  
4 emergency regulations by every other state agency, because the  
5 practice had developed to pretty much, kind of, move things --  
6 quite a few things on an emergency basis. And when Director  
7 Garcia came in, he said, "We really have to look at these in a  
8 serious fashion, because I think lots of things have been moving  
9 in and getting filed on an emergency basis that are, in fact,  
10 not emergencies."

11 And in essence what that does is, that eliminates the  
12 opportunity for public comment, generically, on those  
13 regulations before they go into effect, or limits it severely.

14 SENATOR PETRIS: On that issue, the Superior Court  
15 said that there was credible evidence supporting the emergency.

16 MR. McNAMER: On that particular issue, yes.

17 SENATOR PETRIS: I gather --

18 MR. McNAMER: I believe that it was on that issue.  
19 The Governor overruled that decision by Director Garcia. That  
20 was -- that was in September, I believe, September, early  
21 October.

22 The next -- the next development was that in  
23 December, the Commissioner filed a Certificate of Compliance,  
24 which is a technical way of saying, "We have completed the rule  
25 making process. We've taken testimony. We've summarized and  
26 responded to comments. We've completed the rule making process  
27 on these regulations. Here, OAL, review the rule making file  
28



1 and see if we followed the appropriate procedures. Review the  
2 regulations for compliance with the six standards that the  
3 Legislature had in place."

4 We then reviewed and, at the same time, I believe, he  
5 asked for -- requested re-adoption of the emergency regulations  
6 just to keep them in place in case OAL should decide that the  
7 regulations somehow were defective.

8 SENATOR PETRIS: Where is emergency defined? Is it  
9 in each separate statute, or is it in your set of --

10 MR. McNAMER: It is in the Administrative Procedure  
11 Act. It required that -- the emergency standard says that a  
12 agency has to make a finding that the regulations are  
13 immediately necessary for the protection of the public peace,  
14 health, safety, and welfare, and demonstrate by specific facts  
15 that that emergency situation exists.

16 So, each filing of an emergency is required to be  
17 accompanied by that finding and that demonstration, and OAL is  
18 directed to review those findings, and to disapprove those  
19 regulations on an emergency basis, if there's no showing.

20 SENATOR PETRIS: A few months ago, we had a big  
21 dispute on Forestry emergency regulations.

22 Where those subjected to the same kind of emergency  
23 scrutiny or not?

24 MR. McNAMER: That's correct, yes.

25 SENATOR PETRIS: They were?

26 MR. McNAMER: Yes.

27 SENATOR PETRIS: How long did those take? How long  
28





1 did that scrutiny take?

2 MR. McNAMER: Well, the statutory period for review  
3 of -- of regulations is ten days. That's ten calendar days.

4 SENATOR PETRIS: So you're limited to that?

5 MR. McNAMER: We're limited to ten calendar days.

6 On that initial review by the Office, it's a very  
7 quick thing. I mean, those files come in. It probably takes a  
8 day or so to get them logged in and get them organized, get them  
9 assigned for review. And then, of course, the attorneys who are  
10 reviewing it are -- are balancing a workload to cover the -- you  
11 know, to staff that activity.

12 So, the way it's set up, the Legislature has put a  
13 provision in the Administrative Procedure Act that says if --  
14 that permits public comment on emergencies, but if public --  
15 directly to OAL. And this is the only time that's allowed on an  
16 emergency. But the Legislature said, if the public does comment  
17 to OAL, the agency has to be given an opportunity to respond.

18 So, OAL has adopted a regulation, which provides that  
19 -- that says that OAL will only consider comments if they are  
20 received in writing and within the first five days of that  
21 ten-day period, and if the commentor indicates that they have  
22 provided those comments, a copy of those comments, to the  
23 contact person at the adopting agency, because we wanted to make  
24 darn sure that somebody at the adopting agency got a copy of  
25 those comments so that they could give their input to the  
26 Office, and it could be considered before OAL made a decision on  
27 emergency regulations.  
28



1                   So, that's -- that's the procedure that's in place  
2 for adoption of emergency regulations.

3                   SENATOR PETRIS: I think we need a break for the  
4 reporter. We've been going at it quite awhile. Can we take  
5 five? A five-minute break.

6                   [Thereupon a brief recess was taken.]

7                   CHAIRMAN ROBERTI: The Senate will reconvene.

8                   SENATOR PETRIS: Mr. Chairman, we're on the point of  
9 rebuttal, or answer, rather, to some legal issues that we have  
10 here, and this gentleman is the one in charge of overseeing --

11                   CHAIRMAN ROBERTI: We're going to reconvene.

12                   SENATOR PETRIS: Oh, I'm sorry.

13                   CHAIRMAN ROBERTI: That was a warning to reconvene.  
14 The Senate Rules Committee will reconvene.

15                   Senator Petris.

16                   SENATOR PETRIS: Thank you.

17                   I just wanted to bring you up to date as to where we  
18 are.

19                   I had indicated that when we come back, we'll ask him  
20 to wrap up, and then give the time for rebuttal, and then go on  
21 from there.

22                   Thank you.

23                   MR. McNAMER: Thank you, Chairman Roberti, Senators.

24                   Michael McNamer from the Office of Administrative  
25 Law. I don't know if -- I am the attorney who has represented  
26 the --

27                   CHAIRMAN ROBERTI: Could you just wait moment? I  
28



1 have to make an announcement on Mr. Strock's appointment.

2 We will have the bulk on the Strock appointment next  
3 week, simply because the other appointments have lasted so much  
4 longer.

5 If there is anyone here who is an out of city  
6 witness who cannot come back, then let us know and we'll take  
7 your testimony today. But if you can come back, you would be  
8 much more effective if you're here when the bulk of the  
9 testimony and questioning is going to be taking place, I would  
10 say. And I would also suggest that if you can make it, to  
11 please come back.

12 But if you can't, then we will take your testimony  
13 regarding Mr. Strock's appointment this afternoon. Please let  
14 the Sergeant know if you wish to testify today if you are an out  
15 of Sacramento witness.

16 Now, Office of Administrative Law.

17 MR. McNAMER: Thank you, sir.

18 I am the attorney who reviewed these filings from the  
19 Commissioner and advised Director Garcia. I am the person who  
20 has written the decisions of the Office on these matters, and I  
21 was responding to the allegation that in these -- with regard to  
22 these regulations that the Director of the Office has  
23 substituted his judgment for that of Commissioner Garamendi on  
24 the wisdom of the regulations.

25 And just to summarize, my point is that that is --  
26 that is not correct. The Office made a determination applying  
27 the standards in the Administrative Procedure Act and determined  
28





1 that in three areas, the regulations submitted by the  
2 Commissioner did not satisfy those requirements.

3 The first being, they were not consistent with what  
4 Cal Farm, what the Supreme Court had articulated in Cal Farm as  
5 required.

6 Second, there were some clarity problems with the  
7 regulations.

8 And third, that necessity had not been demonstrated  
9 for the fees that the regulations required the insurance  
10 companies to pay to fund this whole activity.

11 With regard just very briefly to the first issue, I  
12 think that the point that I would just like to make is that the  
13 Commissioner's regulations essentially establish a mathematical  
14 model that gets applied to each and every insurer, and that's  
15 what the regulations develop. The statute itself says that a --  
16 that -- sets the primary standard as -- as excessive and  
17 inadequate. And Commissioner is not to approve rates that are  
18 excessive or inadequate.

19 In developing these regulations, the Commissioner  
20 has put together a package that relies on that mathematical  
21 model, that looks at -- at this financial, fiscal element of the  
22 insurance company's business, and then plugs in numbers that he  
23 has based -- that he has determined through generic hearings,  
24 and it comes out with a maximum permitted earned premium, and a  
25 minimum permitted earned premium.

26 To augment this mathematical model, the Commissioner  
27 decided, apparently, that that was not satisfactory. The  
28



1 regulations allow eight variances in specific areas for  
2 insurance companies in an attempt to demonstrate that in -- if a  
3 company fit into one of those eight areas, that the model did  
4 not result in a fair rate of return.

5         The Commissioner's regulations also limit -- make  
6 that an exclusive list. In other words, there is no opportunity  
7 for any company to come in and show that their particular  
8 circumstances fit into one of those, that there is yet another  
9 variance that ought to be given based upon their specific  
10 circumstances.

11         And that is the heart of the problem that the Office  
12 of Administrative Law had with consistency, because the  
13 regulations expressly state that -- limit the evidence that an  
14 insurer can bring in at the hearing as to essentially  
15 determining whether or to the model and the eight variances have  
16 been correctly applied. That's one problem.

17         Secondly, the Commissioner -- the regulations  
18 specifically prevent the Commissioner from approving a rate that  
19 does not -- is not arrived at through the application of the  
20 mathematical model and the eight variances.

21         I might note that the eight variances only apply in  
22 the case of application for rate changes. Only three of the  
23 eight variances are allowed in the rollback calculation. So, in  
24 the rollback calculation, the mathematical model is used in only  
25 three of the eight variances, and the Commissioner's own  
26 regulations prohibit him from approving a rate that is not  
27 arrived at through this model and those variances.  
28





1                   And OAL found that that scheme, that model variance  
2 limited hearing scheme, did not allow an insurance company --  
3 did not provide an opportunity for an insurance company to  
4 demonstrate that the rate, as determined through the application  
5 of that model and that limited number of variances, was  
6 confiscatory as applied to it.

7                   COMMISSIONER GARAMENDI: Mr. Chairman, that is  
8 policy. That is precisely the definition of policy. It is  
9 precisely the substitution of policy judgment; it is precisely  
10 what is not allowed by the Administrative Procedure Code.

11                   That is the heart and soul of these regulations.  
12 That is the methodology of determining.

13                   What in the world are these characters doing if not  
14 substituting their judgment for mine? And the law says they  
15 can't do it.

16                   MR. McNAMER: If I may respond, the Supreme Court in  
17 Cal Farm taught us, and teaches us, and instructs us, that in a  
18 rate price control scheme, that in order for it to survive a due  
19 process challenge, there has to be adequate opportunity for  
20 individualized relief from confiscatory rates. And that is the  
21 principle of law that is at the heart of this dispute.

22                   The Office has determined that the regulations as  
23 structured do not allow individualized relief from the rates as  
24 set by this mathematical model and limited number of variances.  
25 And that's the legal --

26                   COMMISSIONER GARAMENDI: Mr. Chairman --

27                   MR. McNAMER: -- issue that --  
28



1 COMMISSIONER GARAMENDI: Mr. Chairman --

2 MR. McNAMER: -- that separates us.

3 COMMISSIONER GARAMENDI: Mr. Chairman, the legal  
4 issue is that they're substituting their judgment for mine about  
5 how to go about determining what the values are, and how the  
6 mathematical formula is to be run.

7 They have no power to do that.

8 Furthermore, if you'd like to get into the details --

9 CHAIRMAN ROBERTI: I'm sorry, I wasn't here.

10 Give me the actual charge of the Office of  
11 Administrative Law. Do we have that?

12 COMMISSIONER GARAMENDI: To run amok over Proposition  
13 103, according to them.

14 MR. McNAMER: Here's another perspective --

15 CHAIRMAN ROBERTI: What is your actual charge?

16 MR. McNAMER: The Office of Administrative Law is to  
17 review regulations submitted by the state agencies that have to  
18 -- that -- let me back up one step.

19 The Administrative Procedure Act covers the exercise  
20 of quasi-legislative powers that are delegated to state agencies  
21 by the Legis -- by statute, in essence. And it says, when an  
22 agency exercises one of those powers, that it has to do so in  
23 accordance the minimum procedural requirements set out by the  
24 Legislature, and those regulations have to satisfy six statutory  
25 standards: authority, reference, consistency, clarify,  
26 nonduplication.

27 The authority, reference, and consistency standards  
28



1 are those kinds of -- are the review standards that the courts  
2 have traditionally applied in determining whether or not  
3 administrative regulations adopted through this process are  
4 valid.

5 In applying those standards, the APA instructs the  
6 Office of Administrative Law not to substitute its judgment for  
7 that of the substantive content of the regulations, and in the  
8 same breath, instructs the courts not to do that either. So, it  
9 puts us on the same -- on the same instruction with regard to  
10 substitution of judgment, exercising wisdom.

11 There is no wisdom standard. The Office does not  
12 look at whether or not the policies that are articulated in the  
13 regulations are the best way to go, or there's merit in them, or  
14 anything of that sort. It applies legal standards to determine  
15 whether or not the will of the Legislature, or the will of the  
16 people in an initiative statute, has been carried out by the  
17 administrative agency.

18 SENATOR PETRIS: Mr. Chairman --

19 CHAIRMAN ROBERTI: Well --

20 SENATOR PETRIS: There's one more element.

21 CHAIRMAN ROBERTI: Yes, you were talking about  
22 consistency.

23 MR. McNAMER: Yes, sir.

24 CHAIRMAN ROBERTI: Clarity.

25 MR. McNAMER: Authority, reference, consistency,  
26 clarity, nonduplication, and necessity.

27 COMMISSIONER GARAMENDI: None of which we've been  
28





1 challenged on.

2 SENATOR PETRIS: Now, I asked --

3 CHAIRMAN ROBERTI: Have you specifically dealt with  
4 any of those issues?

5 MR. McNAMER: Yes, the consistency issue is -- is one  
6 problem with these. We -- these regulations were disapproved  
7 because they did not satisfy the consistency standard, the  
8 clarity standard, and the necessity standard.

9 The necessity standard applied to the fee schedule  
10 that is in the regulations, because the rational basis for the  
11 amount of the fees set was not demonstrated in the records  
12 submitted to OAL. That is the charge to OAL with regard to  
13 necessity. OAL found that there was no necessity demonstrated  
14 in the record by substantial evidence, which is the standard in  
15 the Act, for those regulations.

16 CHAIRMAN ROBERTI: I would tend to think that the  
17 charge of the Office of Administrative Law is to make sure that  
18 regulations themselves do not become statutory.

19 And if my recollection serves me right, that is why  
20 the Office was set up in the first place. And that is, the  
21 regulations themselves should not embark upon statutory  
22 adventure.

23 I don't quite understand how the succession of  
24 denials to the Insurance Commissioner is consistent with that.

25 Frankly, what I'm fearful of is that the denial is  
26 embarking upon new statute, and the Commissioner himself is  
27 enforcing the statute, which was Proposition 103. What I'm  
28



1 fearful is that the Office of Administrative Law is doing the  
2 exact opposite of what their charge is. And their charge is to  
3 make sure that regulations don't embark upon the statutory  
4 grounds.

5 MR. McNAMER: The Senator's correct in the  
6 application of the -- when you're talking about that concern, to  
7 me, that raises the authority standard.

8 And under the authority standard, the Office ensures  
9 that the agency does not alter, amend, enlarge, or restrict its  
10 statutory charge. That's as the courts have interpreted that  
11 device. And that -- and that administrative regulations are  
12 reasonably designed to give effect to a statutory purpose, so  
13 that there is no opportunity for adventure by the -- by the  
14 state agencies in the area of authority.

15 CHAIRMAN ROBERTI: I appreciate you and the Director  
16 of the Office of Administrative Law wanting to pursue your  
17 duties as you see them.

18 But frankly, this imbroglio with the Insurance  
19 Commissioner is making me very concerned about the whole charge  
20 of the Office of Administrative Law. I'm fearful that it is a  
21 separate policy agency.

22 I'm not saying that out of any malevolence or ill  
23 will, but I'm afraid we're creating a separate policy agency,  
24 over and apart from the people who are, in the case of the  
25 Insurance Commissioner, an elected official, who is designated  
26 by the people of the State of California to carry out public  
27 policy. And now we have this bureaucracy, that is setting out  
28





1 public policy, doing just the opposite of what its charge was.  
2 And we have now two public policy entities.

3 Frankly, with all due respect to the people who do  
4 conscientious work in the Office of Administrative Law, I tend  
5 to think that it's duplicative of the authority that you're  
6 trying to supervise. And I, myself, don't see any reason why we  
7 have an Office of Administrative Law.

8 COMMISSIONER GARAMENDI: Mr. Chairman, if I might  
9 just --

10 CHAIRMAN ROBERTI: Frankly, it's --

11 MR. GARCIA: May I respond?

12 COMMISSIONER GARAMENDI: Mr. Chairman --

13 CHAIRMAN ROBERTI: Yes.

14 SENATOR PETRIS: Hold on a second, please.

15 To set the stage, my first question to Mr. Garcia  
16 was: what's your mission? And he said the mission of the  
17 agency is primarily to protect the public by seeing to it that  
18 the regulations carry out the intent of the statute.

19 Now, Mr. Garamendi's position has been consistently,  
20 they don't do that. They don't enforce the statute, and they're  
21 throwing in roadblocks at every opportunity instead of carrying  
22 out the intent. That's what the whole issue is.

23 COMMISSIONER GARAMENDI: If I might, Senators, you  
24 are precisely getting to the point here.

25 Mr. Chairman, it was just stated by the good Counsel  
26 to the Director that we had no authority on the fees. In fact,  
27 Insurance Code Section 12979, insurance company filing fees:  
28



1 "Notwithstanding the provisions of  
2 Section 12978, the commissioner  
3 shall establish a schedule of filing  
4 fees to be paid by insurers to cover  
5 any administrative or operational  
6 costs arising from the provisions of  
7 Article 10 ...."

8 commencing, so on and so forth.

9 That's precisely what the fees does.

10 The point here is that they are reaching for reasons  
11 to torpedo and derail our efforts to implement Proposition 103.

12 To reach out and say we have no fee authority is  
13 utter garbage. It is a total misreading, and an obfuscation,  
14 and a god damn lie! It's in the law. It is there.

15 Now, they may not like the fee schedule that we set,  
16 but that's not their place in life.

17 Now, with regard to this business about whether I  
18 have eight or nine, or however many variances I want, and  
19 categories of variances I want, may I read to you Cal Farm  
20 Insurance Company v. Deukmejian, the definitive ruling on this  
21 law:

22 "No provision bars the  
23 Commissioner from consolidating  
24 cases or issuing regulations of  
25 general applicability. Thus, there  
26 is nothing here which prevents the  
27 Commissioner from taking whatever  
28



1 steps are necessary to reduce the  
2 job to a manageable size."

3 "It is to be presumed that the  
4 administrative agency will exercise  
5 its power in conformity with  
6 requirements of the Constitution,  
7 and if it does act unfairly, the  
8 fault lies with the agency, not with  
9 the statute."

10 The point here is this. We, this person, has the  
11 power to write the regulations to carry it out.

12 They have no power to substitute their judgment,  
13 saying that I have restricted too narrowly, or too broadly, the  
14 power to have variations.

15 We have given eight variations, sufficient to cover  
16 the whole known universe.

17 If they want nine, or they want six, or they want  
18 three, that is not their place.

19 This is a blatant attempt by Mr. Garcia to derail our  
20 effort to implement Proposition 103. He's done it three times.  
21 Everytime, he comes up with a different reason, and everytime he  
22 reaches for something else.

23 It is time to put a stop to this baloney! It is time  
24 to enact Proposition 103, to get on with it, and to deliver the  
25 rebates.

26 CHAIRMAN ROBERTI: Mr. Garcia, do you want to address  
27 the point?  
28





1 MR. GARCIA: I'd like to address your point,  
2 Mr. Chairman. Maybe in the process I can address the question  
3 about the fees.

4 Historically, one of the complaints about the Office  
5 of Administrative Law has always been that it's substituting its  
6 judgment.

7 But what we do, really, is, we follow the statute,  
8 which is the Administrative Procedure Act, the APA for short,  
9 and the six standards.

10 And any time we disapprove a regulation, we have to  
11 explain ourselves in a legal brief that illustrates the six  
12 standards, or whatever -- whatever the ground for disapproval  
13 are. So, that's the protection.

14 Now, Counsel, Michael McNamer, stated that the  
15 Commissioner was not authorized to issue fees.

16 COMMISSIONER GARAMENDI: What did he say?

17 MR. GARCIA: I'm going to explain that.

18 What Counsel said was that it failed on one of the  
19 standards, because one of the standards is, if you do put in a  
20 fee structure like that, explain the necessity for it and go  
21 through and substantiate it by evidence. And that's one of the  
22 standards that we are stuck with.

23 In response to Senator Mello earlier, I said that the  
24 agency --

25 CHAIRMAN ROBERTI: Is that standard enumerated in the  
26 statutes?

27 MR. GARCIA: Yes, it is. Yes, it is.  
28



1                   And in response to Senator Mello earlier, I said  
2 we're trapped by the law. We have to follow the law.

3                   The Governor does not have to. The Governor can  
4 overrule us for his own reasons and just explain it to the  
5 Legislature.

6                   So, anything we do under the APA, if we disapprove a  
7 regulation, or send it back, we have to explain it in accord  
8 with the statute.

9                   In response to what Senator Petris asked me  
10 initially, what the dual purpose is, I think that the primarily  
11 purposes are to protect the public's right to comment, and make  
12 sure that there's a record there, and also to protect the intent  
13 of the Legislature and the statutes.

14                   Because, if you -- one of the best things we ever did  
15 around here, I think, was create the Office of Administrative  
16 Law, and I'm not for creating government, but I think people  
17 understand that, because, and the reason I state that is, the  
18 agencies in their zeal overstep their boundaries, and there is  
19 really nothing, there is no appeal for the public unless they  
20 take it directly into court.

21                   CHAIRMAN ROBERTI: Well, I'm fearful. I appreciate  
22 your point, but I'm fearful that you come perilously close to  
23 being a policy maker, and you have to be very careful not to do  
24 that, because your charge is to make sure that regulations do  
25 not, in themselves, overstep themselves and become statutes.  
26 That's your charge.

27                   Denial of regulation in itself can set policy.  
28





1                   And I this was the third one. The third one starts  
2 raising in my mind a question I've had about the Office of  
3 Administrative Law, period, frankly, predating you, and that is  
4 that it just is too much, too prone for mischief, even well-  
5 intentioned mischief, that it becomes the policy maker.

6                   And in the insurance field, we have an Insurance  
7 Commissioner, who you may agree with or you don't agree with,  
8 but he was elected to do his job, and that's what he was elected  
9 to do.

10                  And the Office of Administrative Law was intended to  
11 keep the bureaucracy from thwarting the will of the people, not  
12 itself become a bureaucracy, doing just the opposite of what it  
13 was intended to do.

14                  I personally am sorry I wasn't here. I had to see my  
15 foot doctor. I'm sorry I wasn't here to hear all the testimony.

16                  But frankly, from what I have heard, it hasn't  
17 overcome my presumption that, in effect, the OAL is becoming a  
18 policy maker in this area.

19                  That doesn't go to your qualifications to be a  
20 Director. I think it goes to the whole institution itself,  
21 which concerns me very, very much.

22                  COMMISSIONER GARAMENDI: Mr. Chairman --

23                  CHAIRMAN ROBERTI: Commissioner Garamendi.

24                  COMMISSIONER GARAMENDI: If I might respectfully  
25 disagree with you.

26                  It is in fact the Director of the Office of  
27 Administrative Law that is setting the policy to overturn the  
28



1 policies of other agencies. It could just as easily go the  
2 other direction, and carry out the more narrow and appropriate  
3 function, but instead, this gentleman has consistently  
4 substituted his judgment, not only with regard to 103, but also  
5 with regard to our effort to stem the blatant rip-off of  
6 millions of Californians by unlicensed insurance companies.

7  
8 In two sets of regulations that we have put before  
9 him, he has thought it inappropriate for us to protect the  
10 public from unlicensed insurance companies, a matter we  
11 discussed in some detail while you were absent.

12 So, it's not only with regard to 103. It goes beyond  
13 that. It goes to protecting the public from fraud by unlicensed  
14 insurance companies whose paper isn't -- they don't even bother  
15 to put a ribbon and a seal on the papers they pass out. You  
16 talk about fly-by-night organizations, they just collect the  
17 policies and -- the premiums and run.

18 We tried to stop that. He says I have no right to  
19 regulate the unlicensed insurance companies. I mean, what the  
20 hell are we in business for, if not to regulate the insurance  
21 industry, licensed or otherwise?

22 In 1937, the law was put in place, modified in two  
23 very significant ways, Proposition 103 and assigned risk, CARP,  
24 both of which specified that there is a market for auto  
25 insurance. He says I have -- that there's -- that I have no  
26 reason because it's 1937 law.

27 It's absurd! It is a substitution of his judgment!  
28 It has nothing to do with the formal and narrow role of his



1 department.

2 Incidentally, it's precisely what the insurance  
3 industry wants done. They don't want regulation. They don't  
4 want 103. They don't want an insurance company -- Insurance  
5 Commissioner saying, "Get licensed or get out." They want to go  
6 play their games as they have so many years.

7 It's precisely what they want, and there's the  
8 handmaiden.

9 CHAIRMAN ROBERTI: Any other testimony?

10 Then what we will do is, we will put this over for  
11 one week.

12 MS. MICHEL: We have more time with Mr. Garcia.

13 CHAIRMAN ROBERTI: We'll put it over on call of the  
14 Chair.

15 MR. GARCIA: Thank you, Mr. Chairman, for a very fair  
16 hearing.

17 CHAIRMAN ROBERTI: Thank you, Mr. Garcia.

18 We are going to take up the confirmation of James  
19 Strock, Secretary of the California Environmental Protection  
20 Agency.

21 The hour is late. We're going to allow Mr. Strock an  
22 opening statement, and then all those who want to testify will  
23 be given two minutes, no more than two minutes.

24 People who come back next week, if they can, we'll  
25 try to give them a little bit more time, but this isn't the main  
26 hearing on Mr. Strock. It's just to accommodate people who are  
27 going to be out of the city, unable to return.  
28





1                   So, please tell us why you feel you're qualified to  
2 assume this position.

3                   MR. STROCK: Thank you very much, Mr. Chairman,  
4 distinguished Members of the Committee.

5                   I'm honored to be here today as the Governor's  
6 nominee to be Secretary of the Cal. EPA.

7                   If I might briefly go through my prior experiences  
8 for your consideration, I've spent my working life focused on  
9 environmental improvement and management. I served as a special  
10 assistant to EPA's -- the U.S. EPA's first administrator,  
11 William Ruckelshaus, during his second tour of duty, where I  
12 learned a great deal about how an environmental agency should  
13 work, and how it could be made better.

14                   I also had the privilege of serving as counsel to the  
15 U.S. Senate Environment Committee and assisted them in rewriting  
16 the nation's environmental laws in the mid-1980s, and also  
17 learned a tremendous respect for the legislative process.

18                   I've also served as a private attorney, learning  
19 first-hand the tremendous difficulties that can occur in trying  
20 to apply environmental law and regulations to real life  
21 situations.

22                   I've also served as the General Counsel and Acting  
23 Director of the U.S. Office of Personnel Management, the civil  
24 service, and in that capacity as well as working very strongly  
25 in a commitment to federal workers, I became very attuned to the  
26 needs of the very dedicated career civil servants.

27                   Finally, in my work as the Assistant Administrator of  
28



1 the U.S. EPA in charge of enforcement, I worked very hard to  
2 reorganize the national environmental enforcement functions, and  
3 we worked to create a very credible deterrent against serious  
4 environmental assault through record levels of civil and  
5 criminal enforcement, including against the federal government  
6 itself.

7  
8 The most significant experience I've had the good  
9 fortune to have has been serving over the past year, working to  
10 help the Governor and the Legislature create a Cal EPA that is  
11 worthy of the strong leadership role that you all established  
12 over a long number of years. Our work has included, to be  
13 brief, ranging from the toxics spill at Dunsmuir that occurred  
14 the week of our creation, to work following the Los Angeles  
15 riots recently.

16 We've been very active in a whole series of  
17 legislative issues, including with Members of this particular  
18 panel. We've worked hard to make our permitting process work  
19 better, both with respect to large-scale efforts and also the  
20 needs of small business. And we worked very hard to assert  
21 California's interest against the federal government where ever  
22 necessary as well.

23 In closing, I would like to stress that if I receive  
24 your endorsement, I will give every bit of my energy to have an  
25 agency that you will have confidence and will be proud of, and I  
26 would stress, too, that I am making a point, as is my office, of  
27 going far beyond traditional activities and getting out to areas  
28 where problems are, whether it's on a beach at Santa Monica, or





1 on a farm in Fresno, or a public hearing with respect to a  
2 cement kiln. We're making every possible effort to set a high  
3 standard.

4 Thank you.

5 CHAIRMAN ROBERTI: Thank you very much.

6 If have three people here on my list to testify in  
7 support. I'll call them up. Mr. Greg Schulte, United States  
8 Customs, Oceanside.

9 MR. SCHULTE: Yes, hello.

10 I just have a few remarks to make.

11 I'm a Special Agent with the United States Customs,  
12 stationed in Oceanside, California. I'm the Customs Agent in  
13 San Diego that works environmental crime cases. We look at the  
14 illegal export of hazardous waste.

15 Over the last few months, we've worked very closely  
16 with the California Environmental Protection Agency, with their  
17 Mexico Border Project, in which they've assisted us in looking  
18 at truck inspections of both in-bound and out-bound trucks for  
19 hazardous waste cargo. We work very closely with the San Diego  
20 County Hazardous Materials Management Division to identify  
21 illegal shipments of hazardous waste, both in and out of the  
22 country, and to take some sort of corrective action there.

23 Another program that Cal EPA had worked with us on  
24 was providing training for Mexican Customs Officials in  
25 identifying hazardous waste, and in the safety aspects of  
26 dealing with hazardous waste.

27 On March 6th of this year, we gave a four-hour block  
28



1 of training to approximately 30 Mexican Customs Officers in  
2 Tijuana. That training was given in Spanish by a San Diego  
3 County Hazardous Waste Officer.

4 About two weeks later, on March 22nd, Mexican Customs  
5 intercepted a load of 24 drums of chlorinated solvent waste at  
6 the Tijuana border. The driver of the truck attempted to bribe  
7 Mexican Customs. They rejected his bribe, ordered him back to  
8 the United States to report to U.S. Customs. We seized the  
9 truck and the cargo. We have indicted a company, a shoe  
10 company out of Los Angeles, and three of the officers of the  
11 company for federal felonies on this.

12 I would directly tie that case to the training which  
13 was provided with the assistance of Cal EPA, and a Cal EPA  
14 officer was present, Spanish-speaking officer was present in  
15 Tijuana, at the training, which we felt was a real help.

16 I would like to say that our working relationship  
17 with Cal EPA has been first-class, and we'd like to see that  
18 working relationship continue in stopping the illegal export of  
19 hazardous waste.

20 CHAIRMAN ROBERTI: Thank you very much, Mr. Schulte.  
21 We appreciate your testimony.

22 The next witness is Mr. Leonard Robinson of TAMCO  
23 Steel.

24 MR. ROBINSON: I'm unable to make it next week, but I  
25 did want to get my comments.

26 We're a steel mill located in Rancho Cucamonga,  
27 California. As a matter of fact, we're the only steel mill  
28



1 located in California. We manufacture steel. We make rebar.

2 Well, on occasion, we started a program to recycle  
3 used oil filters. Used oil filters historically have gone into  
4 landfills, leached oil into the groundwater. We worked to  
5 recycle these products to make a product out of it, and we had  
6 a situation with the local air quality district, who may it a  
7 permitting issue.

8 With the assistance of Mr. Strock and his office, the  
9 issue was resolved. We got the permit in ten days, which is a  
10 record for this particular agency. And not only was it good for  
11 the environment, but it resulted in a net reduction of toxics  
12 for our particular type of operation.

13 A small company like us appreciates the efforts of  
14 Mr. Strock and his staff. And I've been an environmental  
15 manager for 18 years. I've seen all phases of it. The biggest  
16 waste in California is not liquid; it's not solid; it's not  
17 hazardous. It's a waste of time. Duplicity in permitting  
18 issues, a lot of run-around; every agency's agenda is more  
19 important to others.

20 What we need to survive in business if environmental  
21 protection is going to be a function of economic recovery, we  
22 need direction, not compromise. We need commitment, not  
23 contemplation. We need encouragement, not just enforcement. We  
24 need assistance, not resistance. And we need accountability,  
25 not accounting ability.

26 We feel that these are inclusive of the agendas that  
27 Mr. Strock brings to the table in regard to the environmental  
28





1 protection for California.

2 We're not out asking for an agency to rubber-stamp  
3 any kind of permit or any kind of issue. We are requesting firm  
4 direction and decisions based on real world scenarios, and  
5 realistic attainment goals.

6 Again, TAMCO Steel is in favor of Mr. Strock's  
7 confirmation as Secretary for the Environmental Protection  
8 Agency.

9 Thank you for your time.

10 CHAIRMAN ROBERTI: Thank you very much. You did it  
11 in two minutes flat.

12 [Laughter.]

13 CHAIRMAN ROBERTI: The next is Mr. Thomas McHenry,  
14 Hazardous Waste Association of California.

15 MR. McHENRY: Thank you very much, Mr. Chairman,  
16 Members of the Committee.

17 I'm pleased to be here today, and I'd be happy to  
18 come back next week, but I'll be meeting with the South Coast  
19 Air Quality Management District to discuss some conflicting  
20 regulatory requirements that one of my clients has with the  
21 Department of Toxics, Substances Control, a matter in which I've  
22 actually consulted with Mr. Strock's office. So, of course, I  
23 won't be able to be here, but I'll try to make my remarks quite  
24 brief.

25 I did take an opportunity to prepare them in written  
26 form. And if I may, Mr. Chairman, may I give you copies for  
27 your review. So, I'll just give you the high points, if I can.  
28



1 I'm testifying here today in my capacity as an  
2 environmental attorney, working with large and small  
3 corporations in Southern California on air, water, and waste  
4 matters. I have generally a compliance practice. And I also  
5 serve as President of the Hazardous Waste Association of  
6 California, which is a statewide, 350-member association of  
7 generators, transporters, and recyclers of hazardous waste.

8 I know the substance of this hearing is not to  
9 address whether there should be a Cal EPA, but whether or not  
10 Mr. Strock is the right person to run it. But I can't help but  
11 say that it's immensely important to my clients and to the  
12 Association, the Hazardous Waste Association, that there be a  
13 Cal EPA and that it function.

14 We, frankly, crave an individual and an agency, some  
15 entity, that we can go to when the air agency tells our client  
16 to do one thing, the waste agency tells him to do another, and  
17 then the water agency tells him to do a third thing. And that,  
18 it seems to me, is the purpose of Cal EPA, and its primary  
19 purpose.

20 Turning to the issues of this hearing, which is  
21 Mr. Strock's qualifications, I want to share with you at least  
22 two anecdotes of my own personal experience in dealing with  
23 Mr. Strock's agency. One is the one that Mr. Robinson  
24 previously referred to with TAMCO, in which Secretary Strock's  
25 office was able to address some conflicting regulations which  
26 were caused by different agencies who couldn't agree on a very  
27 innovative recycling program which was going to reduce the  
28





1 amount of hazardous waste going to landfills, and he stepped in  
2 and was able to broker an arrangement, satisfying all the  
3 environmental requirements, which I think led to a happy  
4 solution, and one that's functioning right now.

5 A second matter that I'm involved in currently is one  
6 in which Mr. Strock -- I've consulted with Mr. Strock's office  
7 about, in which a client has similarly been stuck between two  
8 regulatory goals, and has been able to step in and make -- make  
9 a very useful contribution.

10 Mr. Strock's qualifications are one that you've  
11 already heard about. I think there are three that he brings to  
12 the position that I want to outline to you, and they're  
13 contained in my statements.

14 One, is his qualifications. He's immensely well  
15 qualified.

16 Secondly, I think he has the brains to take on this  
17 job, and I think this is a job which is going to call for  
18 someone to look into the future if California is going to be --  
19 continue to be a leader in environment regulation. Mr. Strock  
20 certainly brings those qualifications to the table.

21 And finally, I think he cares. He's extremely  
22 committed to the environmental issues which are facing us in the  
23 State of California, and he's demonstrated this in his first  
24 year of office.

25 So, if you would like to have me answer any  
26 questions, I'd be delighted to do so.

27 Thank you, Mr. Chairman.  
28



1 CHAIRMAN ROBERTI: Thank you, Mr. McHenry, we  
2 appreciate it.

3 Next I have someone here who indicated concern. We  
4 will take him up next, Mr. Larry Landis of Valley Keeper, Yuba  
5 City.

6 FROM THE AUDIENCE: He had to leave.

7 CHAIRMAN ROBERTI: He had to leave? Okay.

8 Next we will take up those here who indicated  
9 opposition. Mr. Will Allen, California Institute for Rural  
10 Studies, Camesha Growers.

11 MR. ALLEN: Thanks a lot.

12 We came together as a group of organizations who were  
13 concerned about the environment in the middle of May, and we had  
14 an hour meeting with Mr. Strock on the 18th of May. And we  
15 asked him to respond to several concerns we had about the  
16 environment. And the response we got back was 19 pages of Xerox  
17 material from out of the regulations. I didn't see very much  
18 innovative stuff in the responses we got, and the following  
19 statement characterizes Mr. Strock's response, quote:

20 "I do not accept the categorical  
21 statement that children and the  
22 public are being exposed to  
23 dangerous pesticides, and that the  
24 Agency does not do enough to protect  
25 the environment and public health."

26 End quote.

27 We had anticipated that Mr. Strock or -- and the Cal  
28



1 EPA would be an advocate for the environment and a champion for  
2 the environment, and we had also anticipated that SB 950, the  
3 1985 Birth Defects Act, and 550 would generate the information  
4 to fill the data gaps of over 3,000 pesticides, and require data  
5 for all new pesticides introduced in California. Eight of the  
6 ten tests were to be completed by December 31st, 1991, before  
7 the poisons were to be given an extension to finish the tests.  
8

9 In addition to farming, I work for the California  
10 Institute for Rural Studies, and we at CIRS decided to monitor  
11 this re-registration and suspension process. When we began to  
12 inquire from Cal EPA about the status of the first 57 chemicals  
13 on the list, we were sent a booklet of loopholes to the law. We  
14 were also given information on which companies were the data  
15 generators, so that we could help them to speed up the studies  
16 so that agriculture would not lose these poison tools.

17 Finally, we were advised that we could impact the  
18 deferral process on these chemicals by claiming economic  
19 hardship.

20 In order to more accurately monitor this process,  
21 because our assumption was that a lot of the tests that were  
22 being saved for the last period of testing, those two tests that  
23 weren't done by 1991, were the tests that took the longest  
24 period of time. We asked for the summary evaluations of all  
25 these poisons, but acute and chronic. We were told by Cal EPA  
26 Department that it would cost us 35 cents per page. And if we  
27 have to copy this stuff, we at CIRS are prepared to rent a  
28 copier and do it ourselves. But we're under the impression that





1 there is a public law that says that public records are  
2 available from government agencies for the local cost of  
3 commercial copying, which is about one-fifth of the Cal EPA  
4 copying cost.

5 CHAIRMAN ROBERTI: Mr. Allen, you have 30 more  
6 seconds.

7 MR. ALLEN: Okay.

8 So, as advocates for farmers and farm labor, we are  
9 scandalized by these costs and the general inaction of our  
10 California Environmental Protection Agency. We need a champion  
11 for the environment, not an advocate for the chemical companies.

12 We, as farmers, are losing tools, and yet, there are  
13 71,000 acres of certified organic farms right now, and over  
14 150,000 acres of organic farms that are claimed organic. We  
15 know that we can farm without these chemicals. We want Cal EPA  
16 to champion IPM and organic farming.

17 We don't feel that's happening. We feel that they're  
18 dragging their feet, and we want something done about it.

19 CHAIRMAN ROBERTI: Thank you very much, Mr. Allen.

20 MR. STROCK: Mr. Chairman, would I have a chance  
21 today or next week --

22 CHAIRMAN ROBERTI: Today, I'll give you a chance to  
23 rebut. Otherwise, we'll forget what was said.

24 MR. STROCK: Thank you, Mr. Chairman. I'd like to go  
25 through --

26 CHAIRMAN ROBERTI: But why don't you wait until  
27 everybody --  
28



1 MR. STROCK: Yes, excuse me.

2 CHAIRMAN ROBERTI: -- speaks.

3 The next witness is Camelia Yarborough of Concerned  
4 Citizens of Brentwood.

5 MS. YARBOROUGH-NUNES: Good evening.

6 I'm here because I have declined Mr. James Strock's  
7 confirmation.

8 On May 18th, when we met with Mr. Strock, he said  
9 that he's responsible for the children and the people who are  
10 being affected by these potential toxic chemicals. And the  
11 report he sent out, he contradicts his statement, saying he does  
12 not acknowledge any person as being affected by these chemicals.

13 I can only assume that that statement includes 15  
14 chemicals in my area, both the county and state Health and  
15 Agriculture Departments, along with Dr. Strock's office, are  
16 aware of pesticide illness reports of children as well as  
17 grownups diagnosed as exposure to farming chemicals.

18 Given that Pesticide Watch of Los Angeles documents  
19 20-30,000 acute farmworker chemical poisonings per year, there's  
20 a mysterious lack of pesticide illness reports for farmworkers  
21 in our county.

22 In 1991, the Mexican Consulate, Nicolas Escalante,  
23 responded to a violation of a 48-hour re-entry period for  
24 Lanate, which resulted in acute poisoning of a field worker.  
25 Mr. Strock has been made aware of the potential toxic chemicals  
26 drifting into the school yards and onto our farmworkers, and has  
27 done nothing to assure the protection of either, including the  
28





1 application that's taking place right this moment on a field  
2 adjacent to three schools.

3 Mr. Strock seems very comfortable with using the word  
4 "safe" in relation to these chemicals, which not logical at all.  
5 These chemicals in some cases have been proven to cause cancer,  
6 tumors, mutation, birth defects, and over time, accumulate in  
7 the bodies to cause unknown health defects later in life.

8 Some of these chemicals have not been proven safe at  
9 all. The 1985 Yearbook of Agriculture states that sensitivity  
10 at this issue is acute. In some instances, the charges against  
11 a given pesticide are fully substantiated by responsible  
12 research findings.

13 We, the Concerned Citizens of Brentwood, feel that  
14 since Mr. Strock has taken charge, nothing has changed. Our  
15 children are still being exposed, and we are still being given  
16 the run-around. We're tired of bureaucracy. We feel it is time  
17 for those persons in positions of responsibility to be  
18 responsible.

19 Please do not allow another moment to go by without  
20 doing something to protect our most precious resource, our  
21 children.

22 Thank you for your time.

23 CHAIRMAN ROBERTI: Thank you, Ms. Yarborough.

24 Our next witness is Mr. Tom Candrian, Pesticide  
25 Action Group of Marin County.

26 MR. CANDRIAN: Mr. Chairman, Committee Members, I'm  
27 the Director of the Pesticide Action Group, also an appointee to  
28



1 the Committee on Environmental Quality for the San Rafael School  
2 District, and a film maker.

3 Two billion pounds of pesticides per year are put on  
4 the United States. Last year, almost two billion pounds of  
5 pesticides were put on the United States. Forty tons an hour  
6 are exported from the United States.

7 One in nine women that you know in the United States  
8 this year are going to get breast cancer.

9 I'm embarrassed to say that I'm an environmentalist,  
10 after hearing some of the testimony that happened just a little  
11 while ago by environmental managers and environmental attorneys,  
12 people that are representing industries that are polluting.

13 My question to Mr. Strock on May 18th, when we had  
14 the -- when a group of environmentalists had a meeting with  
15 Mr. Strock, was how do we enforce regulations on pesticides?

16 I had an incident just recently. Across the street  
17 from my house is a private school. There was a gentleman  
18 applying pesticides by hand for money.

19 I went over and with my -- I'm a film maker -- I went  
20 over with my camera and documented him applying pesticides with  
21 no safety gear on, with children walking through the pesticides  
22 as he's applying them. And he didn't speak English, either.  
23 So, obviously, couldn't have read the warning signs on the can  
24 of pesticides that he was using.

25 I called the County Agricultural Commissioner. He  
26 said he couldn't do anything, because by the time he got  
27 somebody there, there -- the evidence would be gone. Then I let  
28



1 him know I was a professional film maker; I had it documented on  
2 film -- on tape, actually. And he kind of stuttered and said  
3 he'd put an investigator on it.  
4

5 I called him repeatedly for a month. I've since --  
6 as far as I knew, by the time -- after a month had gone by and  
7 no actions had been taken.

8 In response to the twenty pages of response we got  
9 from our meeting with Mr. Strock, I documented the actions that  
10 had been taken by the County Agricultural Commissioner. And  
11 these actions might -- the actions that the County Agricultural  
12 Commissioner, from blatant disregard for the regulations, the  
13 pesticide regulations, might be a \$500 fine against some  
14 struggling working man with a gardening business, not against  
15 the school, not against this private high school there, not  
16 against the company that's responsible for actually making these  
17 -- irresponsibly making these pesticides available.

18 So, because of the video I showed, because of the  
19 phone calls, the many phone calls I called, challenging the  
20 Agricultural Commissioner to take action, because of the letters  
21 I wrote --

22 CHAIRMAN ROBERTI: You have 30 second, Mr. Candrian.

23 MR. CANDRIAN: -- to the County Agricultural  
24 Commissioner, because of the letters written to the CEPA,  
25 because of a personal plea to Mr. Strock, some action has been  
26 taken.

27 If I wasn't -- and this is like a minor infraction,  
28 okay? I mean, it's not -- it's not like this is a huge





1 infraction that's been taking place. But any violation of the  
2 regulations, in order to have any -- in order to get any action  
3 taken, it's almost impossible to get any action taken. We're  
4 spending thousands of dollars to get a \$500 fine implemented,  
5 that's going to probably fined against the wrong person.

6 So, Mr. -- I oppose Mr. Strock's appointment, because  
7 he didn't -- he didn't come up with any sort of innovative ideas  
8 about how we're going to take care of our environment.

9 One in nine women you know are going to get breast  
10 cancer this year.

11 CHAIRMAN ROBERTI: Thank you, Mr. Candrian.

12 Our next witness is Jan Clayburgh of the Pesticide  
13 Watch of Los Angeles.

14 FROM THE AUDIENCE: She had to leave for Los Angeles.  
15 She'll be back next week, I hope.

16 CHAIRMAN ROBERTI: The next witness is Julie Cook,  
17 Citizens for a Healthy Ukiah.

18 MS. COOK: How are you all today?

19 SENATOR PETRIS: Tired.

20 MS. COOK: I'm tired, too.

21 The reason I'm here today is because I'm very  
22 concerned about this appointment. I became involved in this  
23 group back in July, because we have a particularly harsh  
24 pollution problem in my home town. At night, we're visited by  
25 very strong pollution.

26 This particular plant that is offensive has denied  
27 that anything has come out of this plant at all, except steam,  
28



1 for years and years. But recently, it was bought by  
2 International Paper, who has a history of very bad environmental  
3 abuses and lying to the government. They recently paid \$2.2  
4 million in fines for purposeful dumping, taking their hazardous  
5 waste and burning it as fuel in their boiler without permits,  
6 and so on and so on.

7 Well, they seem to be doing the same thing in my  
8 town. We smell it at night. Our whole neighborhoods are  
9 overcome by this stuff and sick at the same time. It's a  
10 terrible story.

11 They have been found in violation of air pollution  
12 laws. They have a serious problem with groundwater  
13 contamination. But at the same time, the state has given our  
14 water quality agencies exemption for testing for any organics at  
15 all, even though that's what the contamination is around the  
16 wells. And basically, there has been zero enforcement of any of  
17 the laws that we already have.

18 I'm afraid with this streamlining of permits that  
19 Mr. Strock is proposing, that it's going to make a lot more  
20 permits come about. It's not the good businesses I'm concerned  
21 about; it's the few businesses that are not. The few businesses  
22 that try to cut corners and make a fast buck here and there.

23 We have seen a lot of illness in the employees of the  
24 plant, who have complained to OSHA for years and years, and  
25 nothing has been done. We've seen the same illnesses in the  
26 community. We've seen serious illnesses cropping up in the last  
27 couple of years.





1 I'm just afraid that if Mr. Strock is able to take  
2 these air pollution districts, and regional water quality  
3 districts, and consolidate them into larger districts, which are  
4 removed from the citizenry, that there will be no one to come  
5 and see the evidence as it occurs. As it is, nobody can come to  
6 our houses anyway, because most of it happens at night.

7 So, I have some serious concerns. I'm not sure that  
8 Mr. Strock will really protect the public health, and that is  
9 why I'm opposing this.

10 CHAIRMAN ROBERTI: Thank you, Ms. Cook.

11 MS. COOK: Thank you.

12 CHAIRMAN ROBERTI: The next witness is Lew Dunn,  
13 California Committee against Toxics.

14 MR. DUNN: Mr. Chairman, ladies and gentlemen of the  
15 board, I've been involved with the Department of Health Services  
16 for over 15 years now. I lecture nationwide now.

17 I was a person that lived in a community where I  
18 thought we would get help from the Department of Health  
19 Services, which we didn't. We had set up meetings with them.  
20 They set up committees with us. They lied to us. They withheld  
21 information from us for years. At one point, Steve Lavinger,  
22 that is now with the Cal EPA, I understand, told us in a public  
23 meeting that I was on a board of, under Tanner, that sometimes  
24 government just has to lie to you.

25 And while he was making those statements, we were  
26 still being poisoned in our town. There was a Department of  
27 Health Services enforcement officer on the site for over 15  
28



1 months. The documents showed that they were pumping cyanide and  
2 other organics in the air while we were sleeping without the  
3 equipment even being turned on to break it down.

4 What happened in 15 months? Nothing. Nothing has  
5 changed.

6 We have a new name, and when this man sits here and  
7 tells you he worked under Ruckelshaus as an enforcement officer,  
8 the EPA has not enforced any fine in the United States since  
9 they've been out at a maximum fine. And I'd like him to name me  
10 one.

11 Casmania at one time could have been fined \$27  
12 million. Do you know how much the fine was? \$10,000.

13 That sent a clear message: to keep doing what you're  
14 doing because it's profitable to kill people in rural  
15 communities across this country.

16 We're not going to accept it anymore. We want some  
17 strong enforcement. We want some new laws changed that protect  
18 people in the communities.

19 Number one, deed of trust on all properties sold in  
20 the State of California has to be stamped as hazardous waste  
21 property. Prop. 65 does not do it, because you put it in the  
22 hands of the people that have economic interest not to tell  
23 people when they buy their property that they're buying on  
24 hazardous waste, as it was done in Oxnard, California.

25 It's happening all over the state. Roseville,  
26 California, they say there's no cancer cluster in Roseville,  
27 California. There're just a lot of people -- a lot of women in  
28



1 the neighborhood that have breast cancer. Out of 14 homes,  
2 there's 12 homes with women with breast cancer. They said,  
3 "There's not a cancer cluster. It's just a lot of women with  
4 cancer." That's an absurd statement.

5 In the San Joaquin Valley, when they talk about  
6 pesticides, Dr. Kizer sat in front of myself and all the  
7 national news media and said that they did a study on 1748  
8 children, to be exact, in three counties. And I asked him why  
9 he did the study, and they said they wanted to find out how many  
10 children had cancer on all three counties. He said they all had  
11 the same amount, and Dr. Goldman was there.

12 I says, "Excuse me, Dr. Kizer. How many of those  
13 1748 children did you check to find out if they had the same  
14 contaminants in their system that are in the groundwater that  
15 are contaminating Kings, Kern, and Fresno Counties?"

16 Do you know what the answer was? Zero. He said, "We  
17 didn't care what was causing it. We just wanted to find out how  
18 many." And they've shut down 1500 wells alone in Fresno County.

19 And I asked the other question in front of the  
20 national media, "Isn't it a fact that the water table in all  
21 three counties is the same?" He said, "Well, yeah. Well, maybe  
22 we better go back and check these children."

23 Nothing's being done to protect people in these  
24 communities. Nothing has changed. Ruckelshaus didn't do it,  
25 and he went to work for the chemical companies because he knew  
26 how to circumvent the laws. That's no recommendation.

27 And when they say "enforcement", there's been no  
28





1 enforcement. It's a joke. It's an international disgrace. And  
2 when our own government says, "We refuse to sign air -- or,  
3 environmental laws that will coincide with the rest of the  
4 world," we're the only nation in the world that hasn't done it.  
5 That's incredible.

6 No. I don't want this man to take care and  
7 be responsible for the health and welfare of my family any more.  
8 I paid once. I watched my town die. I watched my neighbors  
9 blow up in front of me, literally blow up. And all the time  
10 that they had inspection officers, and they had people on that  
11 site that were swearing up and down there was nothing wrong.  
12 Ladies and gentlemen, I have the most extensive file in the  
13 nation on that site that showed that the Department of Health  
14 Services lied to us for years.

15 We won't take any more lies. We're not going to do  
16 it any more.

17 We want strong people in that are going to protect  
18 us. Number one priority of you gentlemen sitting on this board  
19 and this man here is the health and safety of the people of this  
20 state, not the health and safety of industry. Because industry  
21 is not doing it. They're not doing it anywhere.

22 Ukiah, she's -- Julie Cook, sitting over there, her  
23 children are sick. One lady got up and pled for her child in  
24 Ukiah because he has Parkinson's disease. He was raised ten  
25 blocks from the masonite plant. Do you know what they told her?  
26 "Your son is nameless and faceless to me, and he doesn't count."  
27 That's documented, gentlemen.  
28



1 Thank you.

2 SENATOR PETRIS: Excuse me.

3 Where do you live?

4 MR. DUNN: I live in Covolo. I used to live in  
5 Casmania, California.

6 SENATOR PETRIS: Where is Covolo?

7 MR. DUNN: Covolo is, I hope, one of the most  
8 environmental safest places in the state. It's about 40 miles  
9 off 101 over the mountains into a little valley.

10 SENATOR PETRIS: Which county?

11 MR. DUNN: That's in Mendocino County, where the  
12 masonite plant is.

13 Nothing is being done, Senator, about that masonite.  
14 And it's killing people. And they're giving -- they're  
15 collecting money every three months, the county is, for them to  
16 keep polluting. They're -- they've given variances; they've  
17 given them everything to not let that plant shut down. In the  
18 meantime, you've got hundreds of children, which are documented,  
19 in the schools that are sick.

20 SENATOR PETRIS: Where is the nearest either  
21 Environmental Protection Office or Air Pollution Control, or --

22 MR. DUNN: The air pollution control --

23 SENATOR PETRIS: Water Quality? Where is the nearest  
24 one?

25 MR. DUNN: The nearest one is in Santa Rosa and in  
26 Berkeley is one.

27 The Air Pollution Control Office in Ukiah, the local  
28





1 one for the county, the County Air Pollution Officer gets  
2 threats from the County, administrative. And I can't document  
3 that. He comes and tells us he can't say anything because  
4 they're going to fire him.

5 Here's a guy who put a career into a county job,  
6 which happens a lot.

7  
8 SENATOR PETRIS: Shouldn't you go after the Board of  
9 Supervisors in that county to do --

10 MR. DUNN: Well, you know, that's -- that's really  
11 good, when you have a local Board of Supervisors that come out  
12 in the newspaper and says, one of them, quote/unquote: "We want  
13 to save 450 jobs, and we'll sacrifice the other 14,000 people of  
14 this community."

15 SENATOR PETRIS: They actually said that?

16 MR. DUNN: Yes, they actually said that. And that's  
17 in the newspaper. That's quoted.

18 SENATOR PETRIS: That's grounds for impeachment.

19 MR. DUNN: Well, there's a lot of grounds. The Brown  
20 Act is violated constantly, all right? There's a lot of things  
21 going.

22 But we need help. We need help in this state with  
23 people that are not as affluent. We expect this man and people  
24 like him to protect us, and we don't want words any more. We  
25 want something done. We want to show some positive action for a  
26 change, not for him to get up and say, "I worked for  
27 Ruckelshaus." Man, that doesn't mean nothing to me, except a  
28 lot of graves, okay?



1           SENATOR PETRIS: Would you mind leaving your name,  
2 and address, and phone with the Sergeants so I can get in touch  
3 with you?  
4

5           MR. DUNN: I would be more than happy to. And I've  
6 got the documents. Senator, I will not tell you anything I  
7 cannot document.

8           SENATOR PETRIS: I'm interested. Thanks very much.

9           CHAIRMAN ROBERTI: Thank you, Mr. Dunn.

10          The next witness is Mr. Doug Jackson, of Clean Water  
11 Action, San Francisco.

12          MR. JACKSON: Good evening. My name is Doug Jackson,  
13 Clean Water Action. It's Clean Water Action Project. It's a  
14 nonprofit citizens' lobby.

15          We organize citizen support to put pressure on our  
16 politicians, our bureaucratic agencies, to hold them accountable  
17 to protect our communities ad our water, and basically our right  
18 to clean, safe, ad affordable water.

19          I am a canvasser and I'm an organizer. And if you  
20 don't know, a canvasser is somebody that comes to your door bout  
21 dinner time, asks you to take 30 seconds out of your day to  
22 listen to some very important issues. I knock on doors. I ask  
23 people about the problem. I say, "This is our solution; this is  
24 the legislation; this is how we're working to solve it. Can you  
25 contribute?"

26          I've had checks written to me of over \$200. These  
27 are your taxpayers. These are your voters that are giving their  
28 hard-earned money to organizations like ours to fight, to



1 protect, their inalienable right to have clean and affordable  
2 water.

3           They don't have it. They buy their water. They have  
4 water filters that can cost as much as \$800. They have water  
5 distillers set up because they don't trust the water filters,  
6 and they don't trust Alhambra Water, or whatever they can get.

7           We are currently fighting an incinerator in Martinez  
8 run by a French company called Rhonepoulenc. That company is  
9 under indictment in L.A. for federal violations, toxic  
10 violations.

11           They come up to Martinez to run the same type of  
12 plant, incineration of toxic waste, importing it to be burned  
13 there.

14           Cal EPA wants to de-regulate the permitting  
15 processes, streamline the permitting process. Streamline for  
16 who?

17           Here's the permitting process from the citizen's  
18 point of view. I knock on doors. I get people to sign  
19 postcards, to write letters to their Congress people and their  
20 representatives. I go and I work a 12-hour day. I'm in my 10th  
21 hour of this day. I organize to get people to come out to these  
22 meetings to show a show of force from the citizens and taxpayers  
23 who pay our organizations' work that we do, and to say, "Look,  
24 we don't want this. We want to recycle. We want waste  
25 reduction. We want source reduction. We don't want it."

26           That is what the citizens have to work with.

27           Now, what Rhonepoulenc has to work with, millions of  
28





1 dollars. Thousands of dollars that they spread around in the  
2 town, lies. Full-page newspaper ads that we can't afford to  
3 take out, talking about how Greenpeace doesn't know the facts;  
4 Clean Water Action doesn't know the facts. Communities for a  
5 Safe Environment don't know the facts. Let us tell you our  
6 facts. We have the money to pay for it.

7  
8 De-regulation of this permitting process makes it  
9 easier for these organizations to run their business the way  
10 that they want to. We've seen the S&L scandal; that's  
11 de-regulation right there.

12 This has an even far reacher [sic] effect. If  
13 they're allowed to pollute exactly how they want to, to turn  
14 their business and dump and burn exactly how they want to,  
15 you're going to have a bunch of dead towns on your hands.  
16 You're going to see medical costs -- talking about car  
17 insurance, let's talk about medical insurance. How are you  
18 going to cover the cost of cancer, leukemia, all these things  
19 that are popping up from these toxic violations? The number of  
20 thousands of Superfund sites that we have in this state.

21 If we de-regulate and take away the permit --

22 CHAIRMAN ROBERTI: You have 30 seconds, Mr. Jackson.

23 MR. JACKSON: If we de-regulate the number of  
24 permitting processes that these corporations have to go through,  
25 we are taking the right away from the citizens to stand up for  
26 their communities, to stand up for their well being and their  
27 families, and their right to clean water, clean air, and would  
28 make it that much harder to oppose these kind of things.



1 I oppose Mr. Strock's confirmation to this position.  
2 Nothing's being done, and moving towards streamlining a  
3 regulation process is not what we want to see happen.  
4

5 We want to see more effect for us to stand up for our  
6 communities.

7 CHAIRMAN ROBERTI: Thank you.

8 Senator Petris.

9 SENATOR PETRIS: Just before you go, I can't resist a  
10 comment that a lot of this is under the banner of de-regulation:  
11 get government off our back. That's Ronald Reagan. He got a  
12 tremendous vote from the people. They apparently didn't  
13 understand what "get government off our back" means.

14 What it means is, stop the controls and stop the  
15 regulations.

16 We've got a big campaign going on in the State of  
17 California by business groups, publicizing the mythology that  
18 there are hundreds of companies leaving the state because of  
19 over regulation on pollution and pesticides, and other things.

20 But the people who make those policies are elected by  
21 the same people who are complaining. I'd be curious to check  
22 the voting record in your county, where ever you come from.  
23 It's probably a minority.

24 MR. JACKSON: San Francisco.

25 SENATOR PETRIS: Well, San Francisco is a minority.

26 But our problem is, that we keep running into this  
27 outcry. Some of us carried legislation to do exactly what you  
28 want to do. We run into that argument, that there's too much





1 regulation of business. You're going to drive them out of the  
2 state. The President right now stands alone in Rio de Janiero,  
3 saying, "I'm not going to sign that because it's bad for our  
4 business."

5 Well, all the European nations have business, too,  
6 and they're going to be taxed, you know, the western industrial  
7 countries that are allied with us.

8 So, we have a big problem at the government level,  
9 number one, getting these things enacted. And then, getting an  
10 administration which will vigorously enforce them.

11 Now, I have to say to the credit of Governor Wilson,  
12 who also repeatedly has said he doesn't want these anti-business  
13 regulations, at least he pulled that Agency out of the  
14 Department of Agriculture, which never did anything to enforce,  
15 never, and created a separate Agency, and focused attention on  
16 it.

17 Mr. Strock is under tremendous pressure, and the  
18 glare of the public spotlight, and the consumer and  
19 environmental groups, because he's out there, all by himself.  
20 He can't hide behind a gigantic Department of Food and  
21 Agriculture anymore. And he is specifically charged with doing  
22 something about it.

23 Now, we're going to discuss Ruckelshaus later, next  
24 meeting, and so forth, but I just want to give credit where it's  
25 due. This Governor --

26 MR. JACKSON: I understand that.

27 SENATOR PETRIS: -- in contrast to the prior  
28



1  
2 Governors who regularly vetoed my bills to create a separate  
3 agency for the environment, and fought against most of my bills  
4 on environmental protection and pesticides, and so forth, this  
5 Governor comes along and says, "Hey, we've got to go to work on  
6 this. We're going to take him out of Agriculture," which  
7 traditionally has been the handmaiden of the chemical companies.

8 Strock is not going to be the handmaiden of the  
9 chemical companies. He's the only one who, within 30 days  
10 after he went into office, announced the first list on the  
11 dangerous pesticides under my bill that are going to be  
12 suspended. I've never seen that before.

13 Now, he's got a long way to go. And I'm not saying  
14 he's done everything that I'd like to see him do, or that he  
15 himself wants to do, but believe me, I think he's on the right  
16 track. That's a refreshing change.

17 You know, to you, the progress might be that much.  
18 But to me, where I've been sitting all these years, it's that  
19 much.

20 That's not to take away from your comments at all. I  
21 agree with you 100 percent. But I think we've got a man with a  
22 mandate from the appointing Governor who will read the same  
23 statutes that have been on the books for years differently from  
24 the way they've been read in the past, or ignored in the past.  
25 I really believe that.

26 MR. JACKSON: Yes, sir.

27 SENATOR PETRIS: And if it doesn't turn out that way,  
28 I'll join your group.



1 MR. JACKSON: At a time when the federal EPA has  
2 publicly announced that the solution to our garbage solution --  
3 our garbage problems and toxic waste crisis is source reduction  
4 and recycling and reduction, why is Cal EPA pushing through  
5 permitting processes for incinerators and landfill dumps?  
6

7 SENATOR PETRIS: Well, that's a good question. He'll  
8 comment on it, I'm sure.

9 I want to thank you very much for your testimony.

10 MR. JACKSON: Thank you.

11 CHAIRMAN ROBERTI: Our next witness is Noel Otten of  
12 Action Now.

13 FROM THE AUDIENCE: She's not here. She had to  
14 leave. She will probably be back next week.

15 CHAIRMAN ROBERTI: She had to leave, and she will be  
16 back.

17 Then, Mr. Strock, you may conclude.

18 MR. STROCK: Thank you, Mr. Chairman, distinguished  
19 Members.

20 If I might, because I know the hour's late, if I  
21 could be forgiven to go through several themes that arose in  
22 those statements.

23 The first is, I must say, just speaking personally,  
24 I'm -- I'm very disappointed in the reaction of several of the  
25 citizens' pesticides groups. I met with the groups at their  
26 request at length. The response, which I would like to provide  
27 to the Committee, I've already sent it to Mr. Petris because of  
28 his leadership on these specific issues, was intended to be very





1 responsive, and it laid the door open very explicitly for  
2 follow-up on a series of areas. And I would add that it is so  
3 long because it was written specifically, and I went through it  
4 myself a tremendous length, an attempt to be responsive, and to  
5 get a dialogue going.

6 And indeed, one of the things that you would see in  
7 that letter is that I immediately accepted the request of that  
8 group to come on a tour they would put together when the  
9 legislative session is over to see areas of concern across the  
10 state.

11 Secondly, just briefly, I want to state categorically  
12 that several statements with respect to the law enforcement, I  
13 differ with profoundly. The fact is that the U.S. law  
14 enforcement scheme, which like anything can be done, indeed,  
15 must be done better, is one of the areas right now that we can  
16 say the U.S. is the international leader. It's the only area I  
17 know of where the Netherlands come to us for advice. There  
18 ought to be more, again, and there likely will, but I think  
19 that's something to be proud of and to work to improve.

20 The Governor is very committed to us being strong in  
21 that area. I wouldn't have been chosen except for my  
22 involvement in that issue, and I think the person we brought on  
23 to start our enforcement efforts, named Bill Carter, who's an  
24 experienced prosecutor from Los Angeles, should be a strong sign  
25 of this commitment, and we intend to make good on it.

26 With respect to permitting standards, I would simply  
27 make the point that we're not talking here about just  
28



1 abolishing processes. California has many of the strictest  
2 environmental standards in the world, and indeed, for both  
3 environmental and economic reasons, that makes a lot of sense.  
4 And my top job is to defend those standards.

5         The permitting processes are among the most complex  
6 in the world. They're not being adopted elsewhere. That's not  
7 relevant to making the decision here, but they are simply the  
8 goal to get to the standards, and they should be worked on in a  
9 serious way. And I believe the Governor's view is correct.

10        And I greatly -- have been grateful for the  
11 opportunity to come forward with ideas for changing it, because  
12 the fact is, that while that gives some difficulties for me,  
13 personally working in the environmental area, and I get some  
14 grief about it, if it's not done by the Environmental Agency,  
15 the lead will go to people whose concern is not the environment.  
16 And I think from the environmental perspective, that's not the  
17 way to go.

18         I guess I'll just say in closing today, because I  
19 know it's a long day, and I would have the opportunity next week  
20 to go further, that again, I very much hope to earn your  
21 confidence. I think we have a good, strong record.

22         Enforcement, as -- is extremely important to our  
23 mission, and I think it's important to realize why, because not  
24 just because enforcement is important, but because we have to,  
25 looking through the enforcement prism, look at laws, at what  
26 they say, get them done. If there's a problem, come to the  
27 Legislature, get them fixed. We don't simply reinterpret them  
28





1 on our own.

2 Thank you, and again, I'd hope to earn your support.

3 CHAIRMAN ROBERTI: Senator Petris.

4 SENATOR PETRIS: I'd like to be able to talk to you  
5 soon on a bill I have relating to the schools. I have a bill --  
6 that's not the first year I've put it in -- to eliminate certain  
7 dangerous pesticides from the schools.

8 Tremendous opposition from the polluters, from the  
9 chemical manufacturers. And it says, look, if the stuff you're  
10 using is on this endangered -- among these, we're not going to  
11 let you use it in the schools, either on the grounds to spray  
12 the plants, or inside to disinfect the bathroom, or use it on  
13 the floors, and so forth.

14 It passed the Senate; it's over in the Assembly side  
15 right now in a committee.

16 I'd like for you to review that, and hopefully, you'd  
17 see your way clear to giving that some support, SB 926.

18 And there are other areas, problems, that have been  
19 brought up here that I personally would like to go over with  
20 you.

21 Thank you.

22 MR. STROCK: Yes, sir. Thank you.

23 CHAIRMAN ROBERTI: Thank you, Mr. Strock.

24 With that, the Senate Rules Committee will conclude  
25 this hearing, and we will see you next Wednesday afternoon.

26 [Thereupon this portion of the  
27 Senate Rules Committee hearing  
28



1 was terminated at approximately  
2 6:20 P.M.]  
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1                   CERTIFICATE OF SHORTHAND REPORTER

2

3                   I, EVELYN J. MIZAK, a Shorthand Reporter of  
4 the State of California, do hereby certify:

5                   That I am a disinterested person herein;  
6 that the foregoing Senate Rules Committee hearing was  
7 reported verbatim in shorthand by me, Evelyn Mizak, and  
8 thereafter transcribed into typewriting.


9                   I further certify that I am not of counsel  
10 or attorney for any of the parties to said hearing, nor in  
11 any way interested in the outcome of said hearing.

12                   IN WITNESS WHEREOF, I have hereunto set my  
13 hand this 15<sup>th</sup> day of June, 1992.

14

15

16

17                     
18                   EVELYN J. MIZAK  
19                   Shorthand Reporter

20

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WEDNESDAY, JUNE 17, 1992  
2:35 P.M.

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26

27                   Evelyn J. Mizak  
28                   Shorthand Reporter



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SENATOR DAVID ROBERTI, Chair

SENATOR NICHOLAS PETRIS

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

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California Environmental Protection Agency

SENATOR KEN MADDY

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Global Environment Fund

LYNNE EDGERTON, Environmental Author & Attorney  
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CATHY IVERS  
Communities for a Safe Environment

STORMY WILLIAMS  
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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's appointees, the first on our list is Mr. James M. Strock, Secretary of the California Environmental Protection Agency.

Senator Maddy is here to introduce Mr. Stock.

SENATOR MADDY: Mr. Chairman and Members, you have before you a lengthy resume and bio on Mr. Strock, and I won't try to go through that.

I think what it does display is something that I learned many years ago. Mr. Strock was on my staff back in the late 1970s, prior to the time that he went forward with his education, his law school education, and his education at Oxford, I think it was. At that time, he displayed a tremendous brilliance that is reflected, I think, in his academic record as well as his work experience, a compassion and a feeling for government. The thought that he was going to eventually end up back here in California never crossed our minds, I think, in those days, because he was going back to the east and continue to pursue his career, his academic career as well as his work career.

But I'm delighted he's back. I think that he has almost a next-to-impossible job in the EPA during this particular climate that we have in California, but if there's anyone that is gifted enough, and bright enough, and well equipped enough to handle that kind of a job, Mr. Strock is that person.





1                   So that I would heartily encourage his confirmation.  
2 I think that he will do an excellent. My experience with him  
3 since he's been back here in California, and perhaps I had the  
4 inside because we knew each other so well, but I think all of  
5 you have found that it's an open door to everyone. He's  
6 listened to everyone. He's attempted to try to balance the  
7 interests that must be balanced within the Environmental  
8 Protection Agency; that is, that we're looking at a difficult  
9 situation in California from the standpoint of the business and  
10 economic climate, as well as worrying about the future of this  
11 state from an environmental point of view.

12                   So, I would ask the Members, look carefully to what  
13 he's done, what he's accomplished. Look carefully at his  
14 academic record, his business record, his experience in  
15 government, and certainly I would ask you very strongly to  
16 approve his confirmation and his appointment.

17                   So I thank you very much.

18                   CHAIRMAN ROBERTI: Thank you, Senator.

19                   Okay, Mr. Strock, we'll ask you why you feel you're  
20 qualified?

21                   MR. STROCK: Thank you, Mr. Chairman. I appreciate  
22 being before you a second time today.

23                   Perhaps knowing that I have had the opportunity to  
24 speak once before, I would just again thank the Committee for  
25 its consideration. I hope to earn your approval and to help you  
26 all in creating an Agency with the Governor that we can be proud  
27 of in the environmental arena.  
28



1 CHAIRMAN ROBERTI: Very good.

2 We heard witnesses last week who were out of the  
3 city.

4 Now we will here support witnesses, then we'll hear  
5 witnesses who have concerns, and then we will hear opposition  
6 witness.

7 So, we'll start with support witnesses. Please keep  
8 your testimony to no more than three minutes. That's what we  
9 asked of the witnesses whom we heard from last week.

10 We will start with the people who signed up last  
11 week. We are not really going to add anybody new on, since last  
12 week was the time appointed for this hearing. So, unless there  
13 is really an extraordinary case, I am not going to add anybody  
14 to the list who was not on the list from last week.

15 I will tell you who the witnesses that we have in  
16 support are: John Earhart, Lynne T. Edgerton, Grant Ferrier,  
17 Mike Hertel, Michael Traynor, David Wilma, Doug Lockwood, Dick  
18 Weiser, and Peter Weiner.

19 So, maybe I'll just take people up in that order as I  
20 called them. Mr. Earhart.

21 MR. EARHART: Good afternoon.

22 Thank you for this opportunity to make a testimony  
23 before the Senate Rules Committee. My name is John Earhart,  
24 California for 35 years, and Chairman of the Global Environment  
25 Fund, an environmental investment fund based in Laguna Beach,  
26 California.

27 I'm here today to support the nomination of James  
28



1 Strock as Secretary California's Environmental Protection  
2 Agency.

3 I'm also here because, as a Californian, I want to do  
4 everything I can possible to ensure the long-term ecological and  
5 economic balance of the state. California is a world leader in  
6 the environmental protection area, and this standard must be  
7 maintained into the next century, even as threats to its  
8 resources increase.

9 As you know, I have previously sent to this Committee  
10 a letter expressing my enthusiastic support of Mr. Strock, and  
11 would like to take this opportunity to summarize that document.

12 The Global Environment Fund was created in 1989 to  
13 demonstrate that business development and environmental  
14 protection can and must go hand-in-hand, in a sense, to test the  
15 sustainable development model. Global Environment Fund provides  
16 investors with a conservative yet innovative instrument through  
17 which they can take advantage of new investment opportunities in  
18 the environmental arena.

19 Because of growing public demand and regulatory  
20 pressure for a cleaner environment, there are now exciting  
21 investment opportunities available to such areas -- in such  
22 areas as water treatment, conservation, air pollution control  
23 and prevention, waste reduction, resource recycling, improved  
24 utilization, energy efficiency, and conservation.

25 We seek to find and invest in innovative companies  
26 whose products and services and technologies contribute actively  
27 to environmental improvement. More than anything, the Fund is  
28







1 systematically attempting to identify investment opportunities  
2 that promote environmental quality and greatly increase economic  
3 efficiencies, therefore contributing to the development of a  
4 more sustainable world.

5           It is our belief that those companies unable to make  
6 the necessary adjustments to improve their resource utilization  
7 and reduce waste, pollution and outputs will under-perform in  
8 the marketplace and, perhaps, be out of business in the next  
9 century, not making a particularly good investment.

10           We have found that there are very diverse and  
11 exciting opportunities in this investment arena. We have also  
12 found particularly California businesses are well ahead of the  
13 game on a world-wide basis. The business of the environment is  
14 clearly one area where California has a technological edge with  
15 great export potential. Of the 2,000-plus environmentally  
16 proactive companies that we are tracking and investing in, 10  
17 percent have their base in California. We are currently  
18 monitoring more than 200 companies, ranging in size from private  
19 start-up companies to large, integrated, well established firms.  
20 These companies are extremely important to California's economy  
21 --

22           CHAIRMAN ROBERTI: Mr. Earhart, you have 30 seconds.

23           MR. EARHART: Thirty seconds. All right, let me get  
24 to Jim.

25                           [Laughter.]

26           MR. EARHART: I am testifying today in support of the  
27 Senate confirmation of James M. Strock, California's first  
28



1 Secretary of Environmental Protection.

2 At this critical juncture in the economic and  
3 environmental history of California, it is imperative that we  
4 put into the Secretary's position someone who will vigorously  
5 fight for increased protection of our populous and natural  
6 heritage.

7 Mr. Strock's extensive education and experience in  
8 the area of environmental management, law, and enforcement make  
9 him uniquely qualified to be the state's top environmental  
10 officer.

11 More importantly, however, his understanding of the  
12 direct relationship between comprehensive and vigorously  
13 enforced environmental standards, and long-term economic futures  
14 of the California [sic], make his appointment that much more  
15 critical.

16 I can go on.

17 CHAIRMAN ROBERTI: You made your point.

18 MR. EARHART: Great, thank you.

19 CHAIRMAN ROBERTI: Thank you, Mr. Earhart.

20 Lynne Edgerton.

21 MS. EDGERTON: Good afternoon. My name is Lynne  
22 Edgerton. I'm an environmental author and attorney. I serve on  
23 the Board of the Climate Institute, Green Seal, the Children's  
24 Earth Fund, and Light Hawk.

25 For approximately nine years, I served as a senior  
26 attorney and consultant with the Natural Resources Defense  
27 Council in Los Angeles and New York City.  
28



1                   Mr. Chairman and Members of the Committee, I thank  
2 you for the opportunity to speak in strong support of James  
3 Strock as California's first Secretary of Environmental  
4 Protection. Mr. Strock's education and prior experience make  
5 his highly qualified to serve as California's chief  
6 environmental protection officer. Indeed, many people familiar  
7 with his record as head of U.S. EPA Enforcement Unit credit him  
8 with being the most effective environment chief in EPA's  
9 history.

10                   Of equal importance to Californians, however, is  
11 Mr. Strock's commitment to maintaining high environmental  
12 standards, while, at the same time, promoting economic growth.  
13 What California's families must want is an environmental  
14 secretary will will work for both a clean environment and a  
15 sound economy for present and future generations.

16                   Mr. Strock has already taken many steps towards  
17 securing a healthier environment and a stronger efficient  
18 economy. I'll briefly discuss four.

19                   First, Mr. Strock successfully created Cal EPA, thus  
20 bringing the four agencies responsible for air, water, waste,  
21 toxic substances, and pesticides under one roof with  
22 environmental health specialists. This reorganization  
23 recognizes the interrelated nature of environmental problems and  
24 the need for California to develop incentives to reduce  
25 pollution and wastes overall. An integrated approach produces  
26 three results. First, new problems caused by pollutant behavior  
27 in the environment are more likely to be identified. Second,  
28







1 old problems are more likely to be assessed and cleaned up. And  
2 third, recognition of the damage the transfers of pollution  
3 among media can cause provides a strong incentive to prevent  
4 pollution.

5  
6 Second, Mr. Strock has strongly and effectively  
7 represented both California's interest in a clean environment  
8 and in its fiscal well being by advocating that the clean-up and  
9 redevelopment of the 18 contaminated military bases in our state  
10 be completed quickly and at federal expense. In so doing,  
11 Mr. Strock has demonstrated that he's willing to fight for both  
12 our environment and our pocketbook.

13 Furthermore, by virtue of his considerable experience  
14 with the federal government, he knows when, how, and where to  
15 fight for the rights of Californians vis-a-vis the national  
16 government.

17 Third, Mr. Strock's commitment to vigorous and  
18 effective enforcement of state and federal environmental laws  
19 will be of enormous long-term value to Californians. Vigorous  
20 enforcement and compliance with environmental laws is essential  
21 to the protection of public health, to the protection of other  
22 important environmental values, and to the continued growth of  
23 California's fast expanding green businesses. It provides the  
24 catalyst for private business to invest in providing -- in  
25 finding innovative solutions to environmental problems and in  
26 marketing those solutions, both at home and abroad.

27 Finally, Mr. Strock understands two key economic  
28 truths. First, that environmental protection and technology



1 hold enormous growth potential for California business. And  
2 second, that government action must create, nurture, and sustain  
3 the market for environmental protection.  
4

5 Let me say in closing that I welcome the opportunity  
6 to work with Mr. Strock, the Legislature, business,  
7 environmentalists, and academicians as we build a strong  
8 California Environmental Protection Agency.

9 Thank you.

10 CHAIRMAN ROBERTI: Thank you very much, Ms. Edgerton.

11 Grant Ferrier, Editor in Chief, San Diego Business  
12 Journal.

13 MR. FERRIER: Thank you, Senators. I am with  
14 Environmental Business Journal. I'm the President of our  
15 company, Environmental Business Publishing, which is a small  
16 10-person firm in San Diego.

17 I'm here representing a constituency that you may not  
18 be aware of, and that I think is very important for California  
19 to be aware of, and I think it's an area that Jim Strock himself  
20 is aware of and considers when running the Cal EPA, and that is  
21 the environmental industry.

22 In the United States, it generated about \$120 billion  
23 in revenues last year. In California, its portion was more than  
24 \$20 billion of revenues for environmental service and product  
25 companies. These are companies performing environmental  
26 engineering work, site clean-up work, hazardous waste management  
27 and disposal businesses, analytical services for environmental  
28 testing, recycling, and so forth, and instruments, and other



1 pollution control technology.

2           This is a constituency that I think has not been  
3 represented, and I think it's very important to consider, and  
4 it's a business that relies primarily on environmental  
5 regulations and a strong, integrated approach to environmental  
6 regulations that I think Mr. Strock is uniquely qualified to  
7 continue with Cal EPA. These companies operate primarily  
8 gaining revenues from the generating industries who, obviously,  
9 have a stronger voice with you than the environmental companies  
10 themselves.

11           There are a number of businesses which will depend on  
12 a consistent approach of having the Cal EPA in one office, and  
13 having all the six offices together, driving their business.  
14 They also rely heavily on the liability issue. As you may  
15 imagine, a number of companies with pollution problems will fix  
16 them only because of the fear of the liability that they may  
17 have to face lawsuits or enforcement actions from government  
18 agencies. So, in other words, having a sustained and integrated  
19 approach to environmental protection and regulation drives this  
20 very important business sector.

21           Another angle in maintaining strength in  
22 environmental regulations is that a number of California  
23 companies have invested in looking at their problems  
24 proactively, and therefor, these companies are threatened --  
25 their competitive advantage they have invested for will be  
26 threatened if they don't maintain the strength of environmental  
27 regulations that would -- that keeping a sustained system and  
28







1 not starting all over again with Cal EPA, or having a new head  
2 of the department would create.

3  
4 One more point relates to what a couple of previous  
5 testimonies are, the United started environmental protection  
6 agencies in the world with EPA in 1970. We had a technological  
7 advantage in air pollution control in 1970. In the '80s, we've  
8 lost that to Japan and West Germany and some other European  
9 countries.

10 Environmental technology is a key area to support  
11 both our national economy and trade deficits, and our state  
12 economy as the future builds, and as developing countries and  
13 mid-level countries, mid-tier countries, use pollution control  
14 technologies, clean-up technologies, as well as pollution  
15 prevention technologies. And it's extremely important that we  
16 in California maintain a very solid and integrated approach to  
17 our environmental protection, which will provide the economy and  
18 framework for these companies to operate here in California, and  
19 will give them valuable experience to export their products and  
20 services abroad.

21 In the letter I submitted to you before, I also  
22 enclosed some data which was indicative that almost 180,000  
23 people are employed by the environmental industry in California,  
24 obviously very large, and as transition in the economy --  
25 particularly defense companies are a good example -- a number of  
26 those businesses are applying their technical skills from  
27 defense and bombs to essentially environmental clean-up now.  
28 California has 12 percent of the nation's population, but 16



1 percent of qualified engineers. In other words, we have a  
2 technological advantage. Let's make sure we use the momentum of  
3 the peace dividend to apply that technology to environmental  
4 solutions, rather than lose it to other states or other areas.

5 CHAIRMAN ROBERTI: Thank you very much, Mr. Ferrier.

6 The next is Mr. Mike Hertel, Manager of Environmental  
7 Affairs, Southern California Edison.

8 Mr. Hertel.

9 MR. HERTEL: Mr. Chairman and Members of the  
10 Committee, I won't take time to introduce myself since the  
11 Chairman's graciously done that.

12 I am happy to be here on behalf of my Chairman,  
13 Mr. John Brice, and my President, Mr. Michael Peeve, to endorse  
14 James Strock for Secretary of Environmental Protection.

15 I would like to speak to his personal qualities and  
16 recommend him highly to you on that ground.

17 I've found Mr. Strock to be a man of great personal  
18 integrity. He has great personal conviction about protecting  
19 the environment, and he understands a truth that I think we, as  
20 a utility, cannot move our business out of California and do not  
21 want to. Namely, that there is a strong integration between  
22 environmental health and economic well being. We will not  
23 survive in Southern California without strong leadership in the  
24 environmental area, and I believe James Strock will provide  
25 that.

26 I would also commend him to you because, in the time  
27 -- short time that he's been here, it's been my personal  
28



1 experience that he's brought a great deal of coordination to the  
2 very many and disparate environmental agencies that we have here  
3 in the state. I've noticed this change. I've felt it's very  
4 positive. I recommend him highly to you and urge you to  
5 recommend his confirmation.

6 Thank you.

7 CHAIRMAN ROBERTI: Thank you very much.

8 Next is Mr. Michael Traynor, attorney at law.

9 MR. TRAYNOR: Mr. Chairman and Members of the  
10 Committee, thank you.

11 I've known Jim Strock since 1985. We've talked about  
12 the problems on joint and several liability, and Superfund  
13 clean-up sites when he was a staffer on Capitol Hill, and we've  
14 kept up a friendly communication and regard for each other since  
15 then.

16 Earlier this year, we both joined the Board of the  
17 Environmental Law Institute together.

18 I have the highest personal and professional regard  
19 for him.

20 Two points. I think he will search for the best  
21 science-based regulations within his administration. He'll  
22 search for the best, and in doing that, try to pull the  
23 different interests together and have them work cooperatively  
24 together.

25 The second point is that I believe strongly that he  
26 believes and will bring vigilant and predictable law enforcement  
27 to this Agency. And for that reason also, I strongly endorse  
28







1 him.

2 Thank you.

3 CHAIRMAN ROBERTI: Thank you very much.

4 David Wilma, Special Agent in Charge, United States  
5 EPA.

6 MR. WILMA: Mr. Chairman, good afternoon. I am the  
7 Special Agent in Charge for the U.S. Environmental Protection  
8 Agency in San Francisco.

9 Since 1984, I've been responsible for the U.S. EPA's  
10 criminal enforcement program in California, Arizona, Nevada,  
11 Hawaii, and the trust territories of the Pacific.

12 I participate in a network of investigators and  
13 prosecutors here in California who have built a reputation in  
14 environmental law enforcement as a model for other states. The  
15 U.S. EPA and the FBI are responsible for criminal investigations  
16 at the federal level, but we are unable to enforce the normally  
17 more stringent California state statutes. This latter  
18 responsibility has fallen to the California EPA, fewer than a  
19 dozen California Highway Patrol Officers, and selected district  
20 attorneys' offices. Only a few police departments are able to  
21 contribute resources to this effort.

22 In California, an environmental criminal  
23 investigation typically involves a cooperative effort among law  
24 enforcement and regulatory agencies. Criminal investigators,  
25 representatives of public health agencies and prosecutors pool  
26 their talents and resources in building and presenting cases  
27 against the most serious environmental violators. This  
28



1 cooperation is a result of dedication and professionalism of the  
2 investigators and the direction provided by prosecutors.

3 Task forces have developed in several counties to  
4 facilitate this effort, and federal law enforcement coordinating  
5 committees are active all over the state.

6 In my nine years as an EPA Special Agent, I have  
7 discovered that environmental problems do not confine themselves  
8 to a single media, or statute, or regulation, or department, or  
9 bureau. Pollution problems and polluters cut across these  
10 artificial boundaries, and our enforcement efforts should as  
11 well. At U.S. EPA, my office can investigate a variety of  
12 environmental and other criminal violations because I am  
13 responsible for nine environmental statutes. We have found this  
14 multimedia approach to criminal enforcement to be superior to  
15 other efforts. This multimedia approach we can thank  
16 Mr. Strock for when he was our assistant administrator.

17 To date, California criminal enforcement effort has  
18 been focused on the state's Hazardous Waste Control Act, with  
19 less time spent in the areas of water pollution, air pollution,  
20 and pesticide misuse. The California EPA is now in a position  
21 to coordinate investigations and enforcement in these other  
22 areas, and to begin to take a more comprehensive approach to  
23 environmental crime.

24 To coordinate this effort for Cal EPA, Jim Strock has  
25 selected Mr. Bill Carter, former the Los Angeles District  
26 Attorney's Environmental Crime Unit. Bill and I have worked  
27 together, and he has a clear understanding of law enforcement  
28



1 leadership at the state level. He has participated in  
2 coordinated state, local, federal law enforcement efforts, and  
3 he knows the potential for such cooperation. Bill and I are  
4 working together now to build relationships and capabilities in  
5 this area.

6 I am looking forward to working with Jim Strock and  
7 Bill Carter again, and the California EPA in future cases, and  
8 in further expanding environmental law enforcement. Together,  
9 we'll make a significant contribution to environmental  
10 protection and to our future.

11 Thank you.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Mr. Doug Lockwood, Vice President of American  
14 Environmental Management Corporation.

15 MR. LOCKWOOD: Mr. Chairman, Members of the  
16 Committee, my name is Doug Lockwood. I'm a Vice President in  
17 charge of Environmental Health and Safety for American  
18 Environmental Management Corporation.

19 Our company provides environmental clean-up services,  
20 emergency response, analytical services, and disposal of  
21 hazardous waste for government and for industry. I've been with  
22 the company for about eight years, and prior to that, I worked  
23 for two years as a staff consultant to the Hazardous Waste  
24 Management Council, and five years prior to that, for various  
25 state environmental agencies.

26 During my work in this field, I have participated in  
27 a number of efforts to identify problems and solutions for the  
28







1 state's hazardous waste management problem. None of these  
2 efforts, however, were as comprehensive or well-supported as the  
3 90-day review process which Mr. Strock initiated in September of  
4 last year. I was able to participate in the Hazardous Waste  
5 Regulatory Programs Committee. The effort was broad-based, well  
6 represented, fully supported by the Department, most  
7 importantly, it was conducted to gather not filter input for Mr.  
8 Strock.

9           Also impressive is that some recommendations have  
10 already been implemented. For instance, the Committee  
11 recommended that the state should assert its own priorities with  
12 EPA during negotiations for grant funding and authorization  
13 under the federal program, rather than accept EPA's priorities,  
14 which did not fully address the state's problems. I understand  
15 that Mr. Strock has done this, and achieved substantial  
16 concessions in negotiations with EPA.

17           Another concern expressed by the Committee regarded  
18 the need to obtain an expensive permit modification upon  
19 completing rigorous corrective actions. Again, I understand  
20 that requirement has now been deleted, freeing up funds for  
21 investment into business and technology.

22           Finally, the Department has undergone a  
23 reorganization driven in part by the Committee's concerns about  
24 consistency of program implementation in the regions. This  
25 reorg. appears to address a number of the issues raised by the  
26 Committee, including promoting an interactive working  
27 relationship between the Department and regulated industry.  
28



1 We think these actions are indicative of Mr. Strock's  
2 ability to improve environmental programs at the state by  
3 bringing equity, efficiency, and clarity to the programs without  
4 sacrificing the environmental protections mandated by law.

5 We strongly endorse Mr. Strock's nomination.

6 CHAIRMAN ROBERTI: Thank you very much, Mr. Lockwood.

7 MR. LOCKWOOD: Thank you.

8 CHAIRMAN ROBERTI: Senator Mike Thompson is here.

9 SENATOR THOMPSON: Yes, Mr. Chairman, Members.

10 I just came down to add my name to the list of people  
11 who are supporting Mr. Strock.

12 I want to say that I've had the opportunity to work  
13 with Mr. Strock on a couple of occasions on matters that were  
14 both germane and important to the people who I represent in my  
15 district on the issue of the Dunsmuir spill up in Siskyou and  
16 Shasta Counties. We worked very closely, crafting the rail --  
17 Protective Rail Safety Protection Act of 1991. Mr. Strock was  
18 very, very helpful in that. He even went with me to the site of  
19 the spill and talked to people who were put at risk as a result  
20 of some of the practices of that rail system.

21 He worked closely with me on the mill rate increase  
22 attempt that we made on a couple occasions last year, and also  
23 on the wine -- the lead in wine issues that's very important to  
24 not only district, but my home county.

25 I've found his office to be accessible, and the  
26 people who work for him always interested in working with the  
27 people who work for me, and on the matters of concern to the  
28



1 people of this state and my district.

2 I want to urge you to vote for his confirmation, and  
3 I look forward to casting an aye vote for him when the  
4 confirmation comes on the Floor.

5 CHAIRMAN ROBERTI: Thank you, Senator.

6 SENATOR THOMPSON: Thank you.

7 CHAIRMAN ROBERTI: I have Mr. Vic Weisser, President  
8 of the California Council of Environmental and Economic Balance.  
9 Mr. Weisser?

10 Peter Weiner.

11 MR. WEINER: Thank you, Mr. Chairman. My name is  
12 Peter Weiner. I'm a partner at Heller, Ehrman, White and  
13 McAuliffe. It's a private law firm in San Francisco and other  
14 areas of California.

15 I'm very happy to be here today to support James  
16 Strock's nomination and confirmation as Secretary of  
17 Environmental Protection.

18 Unlike many others who have testified, I did not know  
19 Jim before he came to California. As an ex-assistant to  
20 Governor Brown for Toxic Substances Control, and an attorney in  
21 private practice for decades for businesses and municipalities  
22 subject to Cal EPA jurisdiction, I can certainly join Senator  
23 Maddy in saying the Jim Strock has an almost impossible job.  
24 Certainly a tough job. It's tough to get a new agency off the  
25 ground. It's tough to coordinate independent agencies to  
26 produce firm, fair administration of the law. It's tough to  
27 maintain needed environmental protections in a tough economy  
28







1 when some equate deregulation with growth.

2 Jim Strock is an innovative, firm, and cautious  
3 leader. He listens to all sides. He reads voraciously. He  
4 retains both concepts and detail. He both leads and build  
5 consensus. He is incredibly accessible.

6 Two achievements deserve special mention. First, as  
7 former head of enforcement of EPA, Mr. Strock has committed to  
8 strong, fair enforcement. He has moved quietly but quickly to  
9 integrate agency inspection procedures, cross train personnel,  
10 and coordinate prosecutions with district attorneys, thus  
11 maximizing enforcement resources. This nuts and bolts activity  
12 is unsung but vital to protecting the environment. That  
13 coordination would not otherwise occur.

14 Second, environmentalists, industry, and local  
15 government have all agreed that both Proposition 65 and the  
16 Department of Toxic Substances Control are in need of attention.  
17 Mr. Strock has created an open dialogue on Proposition 65 that  
18 is ongoing and inclusive of all sides. His 90-day review  
19 committee for the Department of Toxic Substances Control, on  
20 which I was privileged to serve, brought almost 200 people  
21 together from all walks of life to reach consensus on needed  
22 changes. Mr. Strock has already implemented many of these  
23 recommendations to produce quicker responsiveness to problems  
24 and greater cost recovery at contamination sites.

25 Jim Strock cares about science. He cares about the  
26 environment. But I think more importantly, it is clear to me  
27 that Jim Strock cares about people.  
28



1 I urge you to support his confirmation.

2 CHAIRMAN ROBERTI: Thank you, Mr. Weiner.

3 We also Sara Amir of CAPS.

4 MS. AMIR: My name is Sara Amir. I'm here in my  
5 capacity as Director at Large for the California Association of  
6 Professional Scientists. CAPS represents the 2100 state  
7 scientists in California government.

8 I'm also an associate hazardous materials specialist  
9 with the Cal EPA Department of Toxic Substances Control. I have  
10 been with the Department for two years and currently work in the  
11 Los Angeles office.

12 Prior to that, I worked for over five years with the  
13 Air Resources Board.

14 As California looks towards the future, our state  
15 government will be faced with a challenge of fostering economic  
16 prosperity without sacrificing our precious natural resources.  
17 Cal EPA is an imperative necessity if this is to succeed, and  
18 Jim Strock's efforts while in the acting capacity have proven  
19 him to be the leader to make Cal EPA successful in this delicate  
20 task.

21 CAPS strongly supports Mr. Strock's confirmation.  
22 His education and experience make him well qualified for the  
23 job. His leadership was demonstrated in the aftermath of the  
24 recent Los Angeles riots. I work in Los Angeles and saw first-  
25 hand the destruction resulting from the civil unrest.

26 One consequence of the riots was the possible release  
27 of hazardous materials from the destruction of old buildings,  
28



1 dry cleaners, paint, photo, and electronics shops, and the need  
2 for proper collection and disposal of these materials. Mr.  
3 Strock immediately visited the damages areas and met with the  
4 city and county officials to initiate the clean-up process, and  
5 dedicated staff and resources within our Los Angeles office.  
6

7 Mr. Strock's innovation can be best demonstrated by  
8 his success in reorganizing the state's environmental oversight  
9 functions in the middle of two disastrous budget years. He has  
10 done this with our full cooperation. Though we are desperately  
11 in need of additional resources to do our job, we appreciate the  
12 leadership and the creativity shown by Mr. Strock in these  
13 difficult times.

14 As scientists, we are excited about the new  
15 opportunities the Agency can provide for us. We anticipate many  
16 new challenges in the future. Global environmental problems  
17 call for California to consider impact beyond its borders when  
18 making business and environmental decisions. Mr. Strock has  
19 shown a willingness to do so.

20 It is refreshing to work with a manager like Jim  
21 Strock, who is willing to work with his employees and their  
22 representative, CAPS, to find creative ways to maintain and  
23 improve public services.

24 We urge you to confirm James Strock as Secretary of  
25 California EPA.

26 Thank you.

27 CHAIRMAN ROBERTI: Thank you very much.

28 Senator Bergeson.







1                   SENATOR BERGESON: Thank you very much, Mr. Chairman,  
2 Members of the Committee.

3                   I would like to offer my strong support for the  
4 recommendation for confirmation of Jim Strock. I've had the  
5 opportunity of working with him since he has been here, and I  
6 have found it to be a very satisfying relationship in his  
7 support, cooperation, and effort, really, to work in a very  
8 constructive fashion with the Legislature.

9                   His impressive background, I'm certain you have  
10 information available to his -- his past accomplishments and  
11 achievements, particularly in the field of environmental  
12 management. And I think at this time, when we look to the true  
13 issues of the environment as it relates to the long-term affects  
14 for California and its relationship to its economic benefits as  
15 well, and I find him very uniquely qualified in his expertise.

16                  So, I would like to -- I would certainly hope that  
17 you would look favorably upon this individual because of his  
18 tremendous ability to accomplish the goals of the state, I feel  
19 are very important, not only to the Legislature, but to all the  
20 people of California. I think he's very uniquely qualified, and  
21 I would hope that you would recommend his approval.

22                  Thank you very much.

23                  CHAIRMAN ROBERTI: Thank you very much, Senator.

24                  Mr. Vic Weisser was not here, but Mr. Jack Gualco is  
25 here to testify in his place.

26                  MR. GUALCO: Mr. Chairman, Members, Jack Gualco on  
27 behalf of the California Council for Environmental and Economic  
28



1 Balance, an organization representing the interests of labor,  
2 business and community activists.

3 We, as you will recall, supported the creation of the  
4 California Environmental Protection Agency, and have been  
5 impressed with Secretary Strock's stewardship of that Agency in  
6 its infancy. We've found him to be fair and accessible, and  
7 willing to balance out various constituencies that CEEB has the  
8 pleasure of representing.

9 So, without any qualification whatsoever, we fully  
10 endorse his nomination by the Governor, and encourage you to  
11 confirm him.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you, Mr. Gualco.

14 Now, that then concludes the list of witnesses I had  
15 from last week.

16 Is there anybody else here to testify in support?  
17 You could probably come up and give your name, if there is  
18 anyone here. I don't see anyone.

19 Now we'll take people who've registered concerns. I  
20 have on my list Larry Landis, Director of the Valley Keeper  
21 Project; Lewis Santer, California Action Network, Glen Anderson,  
22 Jan Williams and Roland Valentine, Radioactive Action Network.

23 Mr. Landis.

24 MR. LANDIS: Thank you. My name is Larry Landis.  
25 I'm Director of the Valley Keeper Project. In my past life, I  
26 was a crop duster pilot.

27 I'm here today because I'm concerned about  
28



1 accessibility with Mr. Strock. We've been unable to show our  
2 concerns about ag. spray drift. We're also concerned about the  
3 entrenched bureaucracy from the California Department of Food  
4 and Agriculture, who also has refused to listen for many, many  
5 years.

6 I'd like to provide some photographs and an article  
7 or two by me for your consideration to the ag. spray drift  
8 article [sic].

9 I'd like to leave one with you, too, Mr. Strock.

10 MR. STROCK: Certainly.

11 MR. LANDIS: This is as brief as I can make it.

12 CHAIRMAN ROBERTI: Very good. He promises to read  
13 it.

14 MR. STROCK: May I say one thing for the record, Mr.  
15 Chairman?

16 CHAIRMAN ROBERTI: Please.

17 MR. STROCK: We have spoken previously. We now have  
18 an enforcement lead person, and we'll hope to work with you  
19 further on the photographs you have.

20 MR. LANDIS: I'll be delighted if that's possible,  
21 but that's not been the case.

22 MR. STROCK: No, we just got the enforcement person.  
23 We just got him.

24 MR. LANDIS: Is his name Jim Wells?

25 MR. STROCK: No, his name is Bill Carter.

26 MR. LANDIS: I'll look forward to meeting with him.

27 CHAIRMAN ROBERTI: Senator Petris.  
28





1                   SENATOR PETRIS: What's the name of that project that  
2 you represent?

3                   MR. LANDIS: It's the Valley Keeper Project with  
4 David Brower.

5                   SENATOR PETRIS: Valley Keeper, okay. Thank you.

6                   MR. LANDIS: Thank you.

7                   CHAIRMAN ROBERTI: Thank you, Mr. Landis.

8                   Mr. Lewis Santer, California Action Network.

9                   MR. SANTER: Mr. Chairman, Members of the Committee,  
10 my name is Lewis Santer. I'm the Membership Coordinator and a  
11 field organizer for the California Action Network. We're a  
12 community-based environmental group working for the last 15  
13 years on issues of sustainable agriculture, water policy, and  
14 farmworker health and safety.

15                   Today, I'm also representing the concerns of a  
16 coalition of 16 California community groups, including the  
17 Valley Keeper, Mr. Landis, who work on a wide variety of  
18 pesticide issues, from Far Spring in the north, to Urban Spring  
19 in Los Angeles. Hopefully, you'll hear from some of the members  
20 of those groups later.

21                   Some of the members of this coalition have been  
22 environmental activists since the Southern Pacific herbicide  
23 spill, some for over 25 years. But all of us were heartened by  
24 the creation of Cal EPA by Governor Wilson, and Cal EPA's  
25 declaration that prevention would be their operational  
26 philosophy.

27                   Over the past year, however, we have developed a  
28



1 number of concerns about Cal EPA and Mr. Strock's leadership, so  
2 we met with Mr. Strock in mid-May and received answers to our  
3 questions last week. Mr. Strock's actions before our meeting,  
4 at our meeting, and his responses afterwards have not been  
5 completely reassuring to our coalition, and I'd like to bring up  
6 some of those concerns.

7 First, the reappointment of James Wells, Mr. Wells,  
8 to head the Department of Pesticide Regulation, told the  
9 environmental community that it was business as usual at DPR.  
10 For over a decade, Mr. Wells has battled alternative activists  
11 on every front. I heard that just this morning, DPR urged the  
12 defeat of Senator Petris's SB 520, a bill to protect  
13 farmworkers, and that's, I think, a further example of the kind  
14 of DPR that we're still working with.

15 DPR also has a Pesticide Advisory Committee. Those  
16 are people appointed by Mr. Wells, and it's still stacked with  
17 chemical industry voices, and in my personal experience,  
18 operates more in the interests of industry than the public.

19 Because of the reappointment of Mr. Wells, we do not  
20 see from Mr. Strock a clear environmental commitment.

21 Our meeting with Mr. Strock was scheduled for one  
22 hour, and involved the coordination of 16 working people from  
23 Dunsmuir, California to L.A. After about five minutes of  
24 introductions, Mr. Strock told us that he could stay for another  
25 ten minutes, but that he could -- we could continue to tell our  
26 concerns to Mr. Wells.

27 After very angry reactions from our group, Mr. Strock  
28



1 did stay the hour, but group members who had seen him give two  
2 hours to industry groups in the week before, felt that community  
3 concerns are not naturally Mr. Strock's first concern, based on  
4 what we felt was sort of a slight in terms of time that was  
5 allotted to us.

6  
7 In his written answer to the questions we raised at  
8 the meeting, Mr. Strock said, quote:

9 "I do not accept the categorical  
10 statement that children and the  
11 public are being exposed to  
12 dangerous pesticides and that the  
13 Agency ..."

14 meaning Cal EPA,

15 "does not do enough to protect the  
16 environment and public health."

17 End quote.

18 That's another indication of our -- of  
19 Mr. Strock's philosophy with which we do not agree. We believe  
20 that the public is exposed to quite a lot of pesticides.

21 Before giving his testimony, this testimony, a number  
22 of lobbyists from larger environmental groups advised us, our  
23 coalition and myself, not to bring up concerns, or not to bring  
24 up opposition, that it would damage our access, because  
25 Mr. Strock's appointment was a done deal.

26 Well, Senators, the community groups I work with are  
27 to that jaded. Access is an idea, an idea that's almost holy to  
28 full-time lobbyists, but it's not the prime concern of





1 homemakers, and workers in Brentwood or Lompoc, or Patterson, or  
2 Blythe, or areas that people live that we work with.

3 What they want and what they're demanding is an  
4 environmental champion in Sacramento. Because they have  
5 families, and jobs, they cannot spend their days at the Capitol.  
6 So, they need a committed representative for their concerns in  
7 Sacramento.

8 Government is already over full with people who go to  
9 bat for industry and business. It is not too much to ask that  
10 the head of the Environmental Protection Agency be as  
11 uncompromising as possible in defense of a clean and healthy  
12 California.

13 We do not think that Mr. Strock is unredeemable, or  
14 lousy appointee, or anything like that. But we can only support  
15 him if he pledges to replace Jim Wells and other reappointments  
16 at DPR, and if he re-thinks the environmental and human impact  
17 of over 400 million pounds of pesticides being spread over  
18 California every day.

19 Those are our concerns. I thank you for your time.

20 CHAIRMAN ROBERTI: Thank you very much.

21 MR. STROCK: Mr. Chairman.

22 CHAIRMAN ROBERTI: Yes, please.

23 MR. STROCK: If I could say a few things, please.

24 First, with respect to Mr. Wells. He comes with an  
25 enforcement background in the pesticides area. I think he's  
26 done a very good job over the past year. He's worked, for  
27 example, was very significant in working with Senator Petris and  
28



1 others on the very strong data gaps reform bills of last year.  
2 And I think he has done a good job.

3           And we're also working, I might add, and Mr. Wells in  
4 particular, to see if there are parts of SB 520 of Mr. Petris  
5 that we could work together on.

6           Secondly, with respect to the pesticide advisory  
7 functions, we've established several new committees, one in  
8 particular focusing solely on the potential of getting  
9 alternatives to pesticides that includes representatives of  
10 environmental groups, and industry, and government. And we  
11 think that has real potential to serve a good service.

12           With respect to the meeting, if I might say, that  
13 day, I was rushed, but I stayed no matter what. The week  
14 before, in fact, I had to do the same thing with industry, leave  
15 them.

16           I've tried very hard. I'm putting in literally  
17 seven-day weeks to get out all across the state, to meet with  
18 all kinds of groups. Sometimes that gets me in trouble of doing  
19 too much in a day, but one thing I committed to that day with  
20 this group was to spend two days with them, touring parts of the  
21 state that had particular concerns to them. And I hope you'll  
22 consider that in putting that into perspective.

23           MR. SANTER: If I can say something, we certainly  
24 appreciate the formation of the Pest Management Advisory group,  
25 the putting out of the beneficial insect directory that the  
26 Department is doing, and all efforts in that direction are  
27 certainly most appreciated. We'd like to see that become the  
28



1 absolute number one priority of Cal EPA, and not simply a  
2 subsection.

3 Thank you very much.

4 CHAIRMAN ROBERTI: The next witness is Glenn  
5 Anderson.

6 SENATOR PETRIS: Mr. Chairman, is this a good time to  
7 ask --

8 CHAIRMAN ROBERTI: Yes, please do.

9 SENATOR PETRIS: On the question of Mr. Wells --

10 MR. STROCK: Yes.

11 SENATOR PETRIS: We did a lot of negotiating last  
12 year. But I've got to tell you, he's tough. Which is all  
13 right, but I really think he has a strong pro -- well, let's say  
14 anti-clean-up orientation.

15 And I would hope that the most you'd do there is put  
16 him on probation, because he really has not been a champion, as  
17 the prior witness complained. There's a lot of truth in that,  
18 and that wouldn't be so bad in an of itself, but the people  
19 running this shop prior to you have really been horrible.

20 I mentioned it this morning. I had 520 up this  
21 morning. I wondering where some of these -- too bad some of  
22 these witnesses weren't there this morning to add some of this  
23 good testimony.

24 But we had some very bad experiences, so we're  
25 nervous about anybody who has that kind of a tilt.

26 We had the situations before in which a political arm  
27 of the Department would overrule the scientific arm. Eighteen  
28







1 scientists quit because their integrity was undermined by  
2 another branch. Their reports were being ignored, reports which  
3 were analyses of the required reports that had to come from the  
4 manufacturer in order to get a permit to sell the pesticides in  
5 California. The scientists, who were top quality, went over  
6 those very carefully, checked the protocols, wanted to make sure  
7 the studies were on the up and up. In some cases, they said we  
8 don't have enough information, so we can't recommend the  
9 marketing of this. In other cases they said this is so  
10 dangerous, we can't allow it. And they were overruled in both  
11 kinds of situations, over and over again.

12           Mr. Wells was a part of that operation. I don't know  
13 what he did or didn't do, and I don't want to accuse him  
14 unfairly here, but I don't know of any instances where he was  
15 the champion who came in and said, "Hey, wait a minute! We've  
16 got these scientists here, and we have to follow. That's what  
17 they're here for. And this is not a subjective judgment. This  
18 is based on their knowledge of the scientific data," and so  
19 forth.

20           So, I would urge you to review that with him. And  
21 I'd be happy to help in the review, because we really need to,  
22 let's say, verify the first impression when Governor Wilson  
23 decided to create this EPA, that that was a great step forward.  
24 That needs to be verified in the personnel, and the policies,  
25 and the attitudes of the people doing it under your direction.

26           We can talk about that some more later.

27           MR. STROCK: Thank you.  
28



1 MR. ANDERSON: Yes, I'm Glenn Anderson.

2 First of all, thank you very much for this  
3 opportunity to meet with you, Mr. Chairman and Members of the  
4 Committee.

5 I'm an organic almond grower in Merced County. I sit  
6 on several boards: Committee for Sustainable Agriculture,  
7 California Family Farmers, California Certified Organic Farmers.  
8 I'm a member of the Advisory Panel to Farmers for Alternative  
9 Ag. Research, and I'm on a technical advisory committee with  
10 UCD.

11 For the last four or five years, we have been --  
12 four-and-a-half years or so -- we have been working on an on the  
13 farm research project that started as a comparative study  
14 between my brother and myself. I was an organic almond grower,  
15 and my brother was a chemical farmer, and we were trying to  
16 resolve the differences and why we seemed to be getting somewhat  
17 similar results.

18 Now, this is several years later. My brother's farm  
19 is going to be converted over to an organic system, and the  
20 community around me is very much converting to sustainable or  
21 organic almond practices. We have now got about eight growers  
22 who, in my community, I'm working with to move their product to  
23 the market as certified organic. It's becoming somewhat of a  
24 wellspring of this kind of product.

25 I guess I really came up here, spent my time driving,  
26 to ask you one very simple question, and that is: where will  
27 you come down in the long-term with respect to chemical farming  
28



1 and the transition and the advent of -- and I'll use the old  
2 word, which is -- organics? Some farmers don't like that one,  
3 but it's a perfectly good word in my vocabulary. What will be  
4 your position on that looking forward?

5 I think that it's becoming really obvious to me that  
6 we can produce very high quality food. The rejection -- the  
7 reject rate for the State of California on almonds for the  
8 nonpareil variety is almost four percent. Those of us that are  
9 doing it organically or that are part of the study are getting  
10 reject rates that are less than one percent.

11 It's costing us less to produce it. We're getting  
12 higher quality, and the net returns are somewhat out of sight at  
13 this moment because the market demand's very high.

14 It's absolutely insane at this point to continue to  
15 defend chemical almond production. These studies point that up.  
16 Here's one copy from 1990 that I had extra that I can leave with  
17 you. You can get copies for '91, and hopefully '92, and  
18 ongoing. We'll keep going with this thing.

19 Here's something else that relates to it, and it's an  
20 earthworm study that came out of the Agri-ecology program down  
21 at U.C. Santa Cruz. Matthew Warner became interested in our  
22 study, and so he went out in our farms and took a sampling. It  
23 turns out that my brother and myself, my brother hasn't been  
24 spraying now for a couple of years, we now have massive amounts  
25 of earthworms in our orchards. A chemical orchard next door, he  
26 was able to find one. There's something going on in that soil.  
27 We've got like --  
28







1 CHAIRMAN ROBERTI: I think you have about 30 more  
2 seconds, Mr. Anderson.

3 MR. ANDERSON: Okay, I think I'm finished, anyway.  
4 I'm making my point, I believe.

5 And you're welcome to come visit my farm anytime you  
6 like.

7 MR. STROCK: Thank you. I would like to follow-up  
8 with you on it, and I do want to stress that clearly, our top  
9 goal in the pesticides area has to be to encourage the  
10 development and move toward safer alternatives. And I think one  
11 of the key things that has to be done is to get leaders like you  
12 together with people in the pesticides regulatory arms, as well  
13 as with the university system, and that's one reason we have  
14 this Alternatives Committee that I have high hopes for that is  
15 now beginning to meet.

16 So, I hope we can follow-up. Thank you, Mr.  
17 Anderson.

18 CHAIRMAN ROBERTI: Senator Petris.

19 SENATOR PETRIS: I just wanted to thank Mr. Anderson.  
20 I'm familiar with the experiment that he and his brother  
21 conducted together. It's all done under legislation that I  
22 carried in creating the whole thing, sustainable agriculture and  
23 the university role.

24 I hope under Mr. Strock's leadership, that will be  
25 expanded as much as possible.

26 You've proved your case, I think, out there in the  
27 field over and over. Thank you.  
28



1 CHAIRMAN ROBERTI: Jane Williams.

2 MS. WILLIAMS: I'm Jane Williams. I don't represent  
3 any group or any interest.

4 CHAIRMAN ROBERTI: That's all right.

5 MS. WILLIAMS: But my training is that I'm an  
6 economist, trained at UCLA. For the last two years, I've been  
7 an environmental educator in a middle school.

8 I'm just so interested to see the economic -- I'll be  
9 very careful about my wording -- but I think it's going to be  
10 very difficult to unseat the pesticide industry. It's also  
11 going to be very difficult to unseat a \$60 billion a year trade  
12 in toxic waste. It's going to take very strong regulations and  
13 very strong legislation.

14 I'm very concerned that Mr. Strock used to work for  
15 who is now the head of BFI, the largest solid waste corporation  
16 in the United States, Bill Ruckelshaus. I think that's a  
17 conflict of interest.

18 I strongly oppose Mr. Strock because of his ties with  
19 big business, and I want to make it very plain the big business  
20 is the hazardous waste industry and the pesticide industry,  
21 multi-billion a year industry.

22 Thank you for a chance to talk.

23 CHAIRMAN ROBERTI: Thank you very much.

24 MR. STROCK: Mr. Chairman, could I possibly say a  
25 couple of things?

26 When -- I worked for Mr. Ruckelshaus prior to his  
27 going to Browing and Ferris Industries, when he was the  
28



1 administrator of the U.S. EPA.

2 I have had no contacts or links of any type to be  
3 questioned with Mr. Ruckelshaus or anybody else in that  
4 industry.

5 I want that, please, for the record.

6 CHAIRMAN ROBERTI: Very good.

7 Mr. Roland Valentine.

8 MR. VALENTINE: Mr. Chairman, Senators, I'm kind of  
9 like a fish out of water here. I've sat here, listened to some  
10 highly professional people, good talkers, and people with a  
11 background. And I assure you that I am not one of these.

12 My name is Roland Valentine. I'm from Rosamond,  
13 California, which some of you may know is down in the Antelope  
14 Valley. Until very recently, who I really was was a retired  
15 military man with 20 years' service, 100 missions over North  
16 Vietnam, an ex-aerospace worker, part of the peace dividend, and  
17 a Goldwater Republican, if anybody remembers what those are.

18 I was one of those who talked a lot about politics  
19 but never really had anything to do with it, so I'm totally out  
20 of place here, I'll have to admit.

21 CHAIRMAN ROBERTI: We're out of place, too.

22 [Laughter.]

23 MR. VALENTINE: However, something else has changed  
24 in my life. The arrival of a new granddaughter has caused me to  
25 reassess what kind of a world my generation has built, and  
26 really where we should go with it from here.

27 So, I started taking a look around, and I was not  
28





1 overly pleased with what I saw. My little community of  
2 Rosamond, California, look around and you will find over 20  
3 certified, well-known toxic waste sites.

4 I might also add, since living there I'm a cancer  
5 patient.

6 I saw that as being the result of, obviously, no  
7 legislation. As you well know, we're right over the county line  
8 from Los Angeles County, and everybody comes up there and dumps  
9 on us, literally.

10 I saw the terrible disaster in the making out at Ward  
11 Valley, and just scares me to death. And I saw the apparent  
12 disregard for the law and public safety happening at National  
13 Cement.

14 And I see these things, not as a disease itself, but  
15 as a symptom of that disease. And as you will know, our  
16 forefathers built a very, very clear adversarial form of  
17 government, a government of checks and balances, where  
18 interested parties are caused to compete in the open for scarce  
19 resources. That the result of all these competitions are that  
20 the public officials and the public themselves are well enough  
21 informed to make a credible and reasonable decision.

22 I think we're also all aware that as we're Americans,  
23 we are extremely suspicious of a monopoly. The reason for that  
24 is that there is no checks and balances; there's nobody watching  
25 the store. Everybody's on the same side.

26 And this is kind of what I wanted to talk to you  
27 about today.  
28



1           Mr. Strock, I was personally very impressed with your  
2 showing up at Lancaster the other day, about ten days ago. This  
3 was obviously not a home-town crowd you were playing to, and I  
4 personally appreciate it.

5           Although I honestly did understand the politics of  
6 such a trip within a couple days of your expected confirmation  
7 hearing, nonetheless, I was definitely impressed. Your presence  
8 did, in fact, give me hope.

9           But what I heard at this meeting gave me a lot of  
10 concern, and I don't know, as a new guy on the block, trying to  
11 express my concerns is a little difficult. But I was concerned  
12 about what I was hearing about what seemed to be a commonality  
13 of interest between the regulatory agencies and the people that  
14 they're supposed to regulate, the businesses that develop by  
15 their very nature things that are hazardous to our -- our  
16 environment.

17           At the same time, I also realize, as a Goldwater  
18 Republican, that our process is critical to our long-term  
19 survival. And we all know there are many well established  
20 business advocacy units, like the Chamber of Commerce, the  
21 Commerce Department, and so on. But there's only one California  
22 EPA, and I hate to use those initials. I like to think of the  
23 Environmental Protection Agency better than EPA.

24           Without the EPA, what do we have but a monopoly; a  
25 monopoly of government and business interests.

26           And Mr. Strock is asking to be Mr. Cal EPA, the  
27 spokesman for the people, our children, your children, for  
28



1 generations to come, and this is a long-term thing. And with  
2 these -- these references I was hearing, this is the disease I  
3 was telling you about that just scares the living daylights out  
4 of me.

5 Last week, after this hearing was continued, we had  
6 reason to stop by his second floor office, and where his very  
7 able lady there helped us out. But while I was standing there,  
8 I looked through the magazines that I found laying around, and I  
9 found a magazine from the coal industry, and some power  
10 industries, but I did not see magazines that I, as a grassroots  
11 person who cares, am familiar with. I didn't see the works of  
12 Jacques Cousteau, or Greenpeace, Audubon Society, Field and  
13 Stream. They may have been there, but I didn't seem them.

14 I once heard someone say that if he could look at  
15 a man's library, he could know who that man really was. I did  
16 see, in all fairness, up on your floor, that I did see some  
17 magazines that appeared to address this item, but they were  
18 stuff I had never seen before. So, I'll just -- I can't speak  
19 to that.

20 Well, Senators, what I believe is that we're talking  
21 about something called integrity. Just plain, old fashioned  
22 integrity, the kind that all of us are going to have to answer  
23 as we approach the end of time on this planet. And that -- that  
24 is something that will answer the question: have I been true to  
25 myself; have I been true to who I said I was; and have I been  
26 true to those who believed in me?

27 Now, I do also realize that in the job that you  
28







1 people have, there's got to be a lot of frustration with people  
2 who come off the street and try to politicize appointments, and  
3 to make life miserable for you, and I certainly can understand  
4 that.

5 And I believe also that you do have to pass on a  
6 man's qualifications, or a person's qualifications for these  
7 jobs. That's -- that is your job.

8 And you have to admit, when you look at Mr. Strock's  
9 qualifications on paper, they are extraordinary. There is no  
10 one, I don't think, who could contest this.

11 But I believe, quite honestly, that there's more to  
12 that than shows upon the paper. I think we have to look at  
13 one's motives and goals, as indicated by the historical record  
14 -- actions, if you would -- and we consider and I consider,  
15 personally, these are also qualifications that must be  
16 considered.

17 Therefore, sir, I most respectfully ask you, as a  
18 person, to examine your integrity before you accept what is  
19 being offered to you by the State of California, the people, my  
20 grandchildren, your grandchildren, and determine for yourself  
21 whether or not you can actually say, feel in your heart, that  
22 you can -- you can fight off this pressure to corrupt your  
23 organization and its mandate. And then I would ask you, if the  
24 answer to that is no, I cannot fight off this pressure, that you  
25 step aside and let them appoint somebody of obviously less  
26 stature than yourself.

27 And Senators, as a citizen of this state, I would  
28



1 respectfully remind you that we, the citizens, look at you to  
2 evaluate not only the qualifications, but the motives and  
3 integrity of those who come before you, and to make the  
4 appropriate decisions on their behalf for those who are either  
5 unable, or unwilling to do so. That's all we as a citizen can  
6 ask.

7 I thank you for your time.

8 SENATOR PETRIS: Mr. Chairman.

9 CHAIRMAN ROBERTI: Thank you, Mr. Valentine.

10 Senator Petris.

11 SENATOR PETRIS: Can you hold on for a couple of  
12 questions?

13 MR. VALENTINE: Certainly, sir.

14 SENATOR PETRIS: Thank you.

15 I, too, want to thank you for being here. I think  
16 you're kind of late, but it's better late than never.

17 And I welcome you to the political arena, so I'm  
18 going to ask you some political questions.

19 Does a Goldwater Republican vote for Deukmejian?

20 MR. VALENTINE: This particular one, no, sir.

21 SENATOR PETRIS: No?

22 MR. VALENTINE: No, sir.

23 I must remind you, I came out of the military, where  
24 at least my part of the military, the joining of politics and  
25 the military way of life was essentially -- didn't happen.

26 SENATOR PETRIS: You separate them.

27 MR. VALENTINE: Stayed out of it.  
28



1           SENATOR PETRIS: You've only been out how long?

2           MR. VALENTINE: I've been out about ten years. I'm  
3 just starting to realize that I need to get in, pardon the  
4 expression.

5           SENATOR PETRIS: Well, I was intrigued by your  
6 comment that everybody seems to be on the same side, and I just  
7 want to hasten to point out to you, that's not true at all.

8           Some of the people who've come up here and complained  
9 over the years have elected people to office that are doing the  
10 opposite of what you want to do.

11           For example, on this pesticide thing that you're  
12 concerned about, rightfully, we fought and fought and fought  
13 with Governor Deukmejian to get that legislation on the books.  
14 He was totally opposed to it. And the same response, "More  
15 regulations. You're dumping a lot more burdens on business;  
16 you're going to drive business out of the state; you're putting  
17 business at a competitive disadvantage," and on and on it went.

18           And the Governor was a gallant and devoted warrior in  
19 the interests of knocking down any bill that he thought fit into  
20 that category.

21           Now you're hearing a lot of the same stuff right now.  
22 This morning we had the hearing on 520, and the opposition said,  
23 "It costs too much for us to do what you want to do." And I  
24 said, "Well, how do you measure cost when we're saving lives?"  
25 Which is literally what we're trying to do.

26           So, I would invite you and all the other Goldwater  
27 Republicans to examine very closely who these guys are in all  
28





1 the offices.

2 Now, Governor Deukmejian had a pretty good track  
3 record. When he was Attorney General, he was charged with the  
4 responsibility for enforcing the Coastal Act, the Coastal  
5 Commission, to save our coasts. We couldn't get it out of the  
6 Legislature, so a bunch of us got together and put it on the  
7 ballot to go through an initiative process, and the people  
8 overwhelmingly supported it.

9 The A.G. was specifically charged with enforcement.  
10 And the one who was in office at the time did it. He created  
11 the Division, five or six lawyers.

12 Deukmejian comes along and closes it down. He closes  
13 it down, and there's no more enforcement of the Coastal Act.

14 Now come people who say, "You should have done this  
15 or that to protect the coast." Well, where were you? The track  
16 record was clear. He got a lot of publicity when he did that.  
17 There was a big controversy over that, and a lot of criticisms  
18 and complaints, and efforts to try to get them to put those  
19 people back in. He wouldn't do it.

20 So, you know, a lot of people bring this on  
21 themselves. So, I'd like to offer my thanks to you for being  
22 here. I hope you stay aboard, and I hope you will examine the  
23 thing further, because you're going to find out that everybody's  
24 not on the same side.

25 We're not winning all the battles. We're only  
26 winning a handful, but we're trying, and we'd welcome your  
27 support on it as we go along.  
28



1           MR. VALENTINE: Thank you, sir, and I guarantee you  
2 that my personal support is there. And I will have to admit  
3 that, as I started dealing with some of these people, they look  
4 at me kind of like, well, kind of strange when I tell them I'm a  
5 Republican, because apparently the word is out that Republicans  
6 don't care about our planet and the environment.

7           That's not true. There are some of those of us who  
8 care.

9           SENATOR PETRIS: There are a lot of very good  
10 conservationists in the Republican ranks. They don't get  
11 elected to the governorship.

12                           [Laughter.]

13           MR. VALENTINE: Thank you.

14           MR. STROCK: Mr. Chairman, could I please say a  
15 couple of things.

16           CHAIRMAN ROBERTI: Yes, please.

17           MR. STROCK: Reacting to Mr. Valentine's really  
18 thoughtful remarks, first of all, I'll take a look at the  
19 magazines. I probably have all the ones he likes in my office  
20 and have not been sharing them with the people out front. I'll  
21 get them back out.

22                           [Laughter.]

23           MR. STROCK: Second, I would say that he mentioned  
24 the timing of the hearing at Lancaster and Lebec. I did not set  
25 the timing for that hearing. That happened to be scheduled. In  
26 fact, it was a tough time for me. I was -- I was out until  
27 very, very late in the morning to get there and get back right  
28



1 before the hearing last week. It was, I believe, Monday night.

2 But I'll think you'll find, if I might add for the  
3 record, that I have met with people across the state, and I  
4 continue to do that and don't just deal with these things on  
5 paper.

6 CHAIRMAN ROBERTI: Thank you.

7 Now we have opposition witnesses. The ones I have  
8 are Lee Hudson, representative of the Group for Alternatives for  
9 Spreading Poisons and the California Coalition for Alternatives  
10 to Pesticides; Joan Clayburgh of Pesticide Watch; Tom Candrian,  
11 Pesticide Watch; Noel Otten of Action Now; Bradley Angel, a  
12 Toxic Campaign Director for Greenpeace; Dr. Gary Flint, Citizens  
13 for a Healthy Ukiah; Lyle Talbot, Health Risk Assessment; Dan  
14 Offield, of CAPIT; Kristi Osborn of Concerned Citizens of  
15 Dunsmuir; and Ralph Sattler and Cathy Ivers, Committee for a  
16 Safe Environment.

17 Now, Mr. Hudson or Ms. Hudson? Ms. Hudson, there we  
18 go.

19 MS. HUDSON: I didn't realize there was another  
20 category in between opposition and support. I'm not sure where  
21 I belong.

22 We did meet with Mr. Strock, and I will say he is  
23 very personable, very nice, obviously very bright.

24 What we do know of his background, however, indicates  
25 to us that his training and experience is grievously  
26 traditional.

27 The problems that we face as Californians, however,  
28







1 with respect to surface and groundwater contamination, air  
2 contamination, foods that are poisoned systemically with  
3 biocides, soils which are depleted of nutrients and then  
4 poisoned with chemical fertilizers, these are all problems which  
5 are going to require the mind-set of someone who's capable of  
6 very proactive and very innovative solutions.

7           We do find it rather disquieting to see that  
8 Mr. Strock has flanked himself with lieutenants from the  
9 Department of Food and Agriculture, who have made a career out  
10 of thwarting every reasonable alternative to the use of poisons  
11 in agriculture. This in spite of Governor Wilson's statement at  
12 the beginning of his term that the theme of his administration  
13 would be prevention rather than clean-up.

14           Gentlemen, I think we need fresh, forward-looking  
15 regulators. Business as usual no longer brings us comfort, and  
16 safety, and the good life. Industry also can and must look to  
17 viable, sustainable technologies and products. They need,  
18 however, the leadership of one who has the familiarity with and  
19 the penchant for seeking commercially profitable,  
20 environmentally sustainable alternatives.

21           That's the key word here throughout, alternatives.

22           My colleagues in the anti-pesticide movement and I  
23 collectively represent literally thousands of years of  
24 experience in alternatives. The bottom line is that the  
25 solutions are there.

26           Mr. Strock's response, his written response, to one  
27 of the questions that we asked, which was with respect to what  
28



1 preventative programs are in place, where are they, how can we  
2 review them, how can we respond to them both pro and  
3 retroactively, and the response was that 14 years ago,  
4 integrated pest management was initiated in this state. That  
5 was a disquieting response.  
6

7 Depending on how it is employed, IPM can be a  
8 valuable tool, moving us toward the elimination of pesticides,  
9 or it really can be lip service, and then just proceed as usual.  
10 In 14 years in California, IPM has meant "Talk the Good Talk,  
11 and then Spray On."

12 Now, my remarks are geared more toward agriculture  
13 today, but I could be talking to you about alternatives with  
14 respect to household toxins, business toxins. I work for the  
15 county's Tanner Committee, dealing with hazardous waste  
16 alternatives.

17 But with respect to agriculture, no one is really  
18 suffering more from our ill advised policies than the farmers,  
19 whose land is spent, and who find themselves being endangered  
20 health-wise because of our ill advised policies. They are the  
21 most immediately and most profoundly impacted by toxic chemical  
22 use.

23 And yet, every crop grown commercially in California  
24 today can and is being grown in a commercially viable way  
25 organically, every single crop. There are, as Will Allen  
26 testified last week to you, over 71,000 acres in California in  
27 the certified program, and over 150,000 acres grown organically  
28 right now.



1 Nonchemical food tastes better; it looks better; it  
2 has more nutrition. It's healthy and delicious.

3 Now, last week I had a basket of fruits and  
4 vegetables, and so forth --

5 CHAIRMAN ROBERTI: I remember it.

6 MS. HUDSON: You remember that.

7 Unfortunately, we weren't able to duplicate that.  
8 What I had intended to do was to have a representative basket of  
9 food which -- and that basket, I do want to say, there was rice  
10 from Sacramento Valley, apple sauce from Sonoma, strawberries  
11 from Watsonville, vegetables from the San Joaquin Valley, wine  
12 from Napa Valley, cotton from the south, all this was grown  
13 organically, including the T-shirt that was included in that  
14 basket.

15 Also, next to that basket was a box or a basket of  
16 food that was grown chemically. And I really wanted to have  
17 that for you to give that to you, and to say to you, the one was  
18 grown with chemicals; the other was grown with sun, water,  
19 nutrients, and common sense. Which one would you want to serve  
20 to your loved ones if you really had the choice?

21 The basket that was organic really represents the  
22 future of agriculture. Agriculture is the highest growing  
23 growth sector in the food industry. It is a \$2 billion industry  
24 in the United States, and it is the future.

25 So, I wish that we had this basket. I'd like to give  
26 you a basket and ask which one you would prefer to eat.

27 MR. STROCK: I'd probably eat both, because I love  
28







1 all those foods.

2 [Laughter.]

3 MR. STROCK: I'd appreciate it.

4 MS. HUDSON: But if you had the choice, and one  
5 really signifies the future, the other signifies death.

6 And so, I would like you gentlemen to consider very  
7 carefully who you think should head the Agency that's going to  
8 be responsible, not just of overseeing the protection of our  
9 fragile environment, but actually changing the course.

10 That's what we need to do, Jim. So if you get in  
11 there, and I'm sure you will, we need to look to changing the  
12 course. We cannot do business as usual.

13 Thank you.

14 MR. STROCK: I would hope to earn your confidence.

15 CHAIRMAN ROBERTI: Thank you, Ms. Hudson.

16 Noel Otten.

17 MS. OTTEN: I think Joan Clayburgh is next.

18 CHAIRMAN ROBERTI: Excuse me, yes, I'm sorry.

19 Joan Clayburgh.

20 MS. CLAYBURGH: My name is Joan Clayburgh. I'm the  
21 Director for Pesticide Watch.

22 I'm here today because, as we all know, Cal EPA, one  
23 of the main reasons why it was set up was to address the  
24 pesticide issue. I think there is a lot of concern about the  
25 California Department of Food and Agriculture and its dual roles  
26 both to promote agriculture and, some would way, to promote  
27 pesticides, as well as to protect public health and the  
28



1 environment.

2           That's why we're here today. We take very seriously  
3 that Cal EPA's -- one of its main missions is to protect the  
4 public from pesticides, and choosing the leader for that Agency  
5 is critical to seeing that goal through.

6           We're here because we're not convinced at all that  
7 Secretary Strock currently, or Mr. James Strock, is the person  
8 to actually meet those goals. And one of the prime concerns  
9 was, we -- base this on basically our observations over the last  
10 year, and again, a meeting that we had recently, as well as some  
11 responses to that meeting. And one of the things he stated was  
12 that he did not accept the fact that the public and children are  
13 exposed to dangerous pesticides, nor that the Agency does enough  
14 to protect them.

15           We heartily disagree with that statement, and that's  
16 because we work with community groups across the State of  
17 California. We receive calls on a weekly basis from people who  
18 are directly affected by pesticides, and particularly children  
19 who are being affected, and mothers who are very concerned about  
20 their situations. And I wanted to outline some of these  
21 concerns.

22           One is, in particular, we find a lot of mothers from  
23 agricultural areas calling us, because their children are on  
24 breathing machines that seem to correspond to spray seasons.

25           We also know that their doctors have confirmed that  
26 their exposure has resulted in -- their effects have been a  
27 result of their exposure to neurotoxic pesticides that are being  
28



1 used around their agricultural communities.

2 We know of nurses who talk about communities where  
3 they see a particular type of cancer, and before they even know  
4 where the individual's from, they can guess what particular part  
5 of the community they're from.

6 We know of teachers in areas where their schools,  
7 it's common to have drawers full of asthma medication because of  
8 how severe the situation is right around their schools.

9 So to us, there's no doubt that the public is being  
10 exposed to dangerous pesticides. And we think it's very  
11 foremost that the Director of the Agency also agree and  
12 recognize that this is a problem.

13 The response to the agencies that we're finding in  
14 these communities, when they cry out for help, has not been  
15 adequate. In particular, they're always directed first to the  
16 agricultural commissioners. And here we find a myriad of not  
17 adequate responses. One has been, when there's been drift in  
18 the community, they'll agree to send someone out to park their  
19 car during the next application, and actually monitor the car to  
20 see if there's spray drift, you know, hitting the car windshield  
21 or hitting the car. That, to us, is not an adequate response.

22 In addition to that, they've -- out of a lot of  
23 pleading, they've finally been able to get agencies to come out  
24 to their areas to talk about this issue, but unfortunately, the  
25 agencies haven't often been listening to the concerns from the  
26 community members. Instead, they've been presenting why there  
27 actually couldn't be a problem because this is the current  
28







1 regulation, and they're set out to protect them. They'll show  
2 maps up, you know, and actually mark up where restricted  
3 materials aren't allowed to be applied, and really try to  
4 convince the community that this, you know, the asthma, or the  
5 breathing machines their children are on, you know, it's beyond  
6 them to understand how that could possibly be related to  
7 pesticides.

8  
9 And so, we're always getting calls from people  
10 extremely frustrated with dealing with these agricultural  
11 commissioners. In fact, the only results we've seen has been  
12 because of the dedication of mothers who, for example, have  
13 finally got a fence up out next to the school yard to make sure  
14 the kids don't run out and actually play in the fields, or have  
15 actually gotten a 1-800 number set up so they can call the night  
16 before to see if there's any pesticide applications near their  
17 school or near their home, and then they can either keep their  
18 children out of school, or they can move their children to  
19 someone else's home that's not near the application site.

20 To us, that's not a solution, and we're very  
21 concerned about this problem.

22 When we -- this isn't just an agricultural problem,  
23 though, as well. It's also an urban problem, and here it's  
24 particularly again regarding enforcement. We've had -- been  
25 dealing with pesticide use in schools, and one scenario has been  
26 that one mother found out that a pest control company doing  
27 service for her school district has violated the law 69 times.  
28 And the way she found out, unfortunately, was because her



1 children were coming home with headaches, and when she checked  
2 it out, it corresponded with applications being down by the pest  
3 control company. When they checked that out, the pest control  
4 company was violating the law by applying a pesticide that was  
5 an organophosphate in the school cafeteria when the kids were  
6 present. It's a blatant violation.

7  
8 So, she got the school district to fire the company,  
9 but the ag. commissioner only would agree to actually put a very  
10 small fine on the company. And in my opinion, this is such a  
11 gross violation that there should actually have been -- this  
12 applicators license should have been pulled.

13 So, because of that, we actually sat down and  
14 presented to Strock some of our concerns, and listed out a set  
15 of demands. And the response to these demands, to us, just was  
16 not adequate, we think, to be both the aggressive leader that we  
17 need. And let me give you an example here. We asked him if he  
18 could address the issue of drift, and we got back basically  
19 quotes for, you know, what the current regulations are.

20 But what we were, I think, looking for, and what we  
21 didn't see, was actually an indication that Secretary Strock  
22 agreed that this was a serious issue, and that there needed  
23 further action to be taken to really adequately address it.

24 We also -- I guess the other thing we were concerned  
25 about, obviously, is pesticides and children's exposure. And  
26 here, we again got a response back from Secretary Strock. It  
27 actually lists -- you know, puts out the scientific process for  
28 risk assessment, and how that includes children's exposure



1 through dietary exposure and home exposure. However, again, we  
2 were very concerned, because one, it didn't mention anything  
3 about agricultural exposure. We're concerned about the risk  
4 assessment process in, again, these children who actually are  
5 going to school right next to a field, or playing or living  
6 right next to a field, and their exposure, and how does risk  
7 assessment take that into account.

8  
9 But in addition, we haven't ever gotten a written  
10 standards showing us that the Department of Pesticide Regulation  
11 has a very strict protocol for how --

12 CHAIRMAN ROBERTI: You have 30 more seconds.

13 MS. CLAYBURGH: Okay.

14 -- and such children's exposure.

15 I mean, I could go on and on about our concerns with  
16 the list. But I guess the bottom line is, we really want to see  
17 a leader for this Agency who first and foremost says that they  
18 are going to act on the pesticide issue, that they are going to  
19 aggressively work to reduce the most dangerous pesticides, and  
20 that their real goal is to promote safe pest control. It's not  
21 to promote the use of pesticides safely. In our opinion,  
22 pesticides are just one teeny piece of a real, you know, pest  
23 control program, but that their first goal is to promote safe  
24 pest control. If we're going to use pesticides, then it could  
25 be used safely.

26 I think it's a whole different mentality than what  
27 we've seen in the responses currently. And again, it just point  
28 to what other people are saying, and that is that there are







1 alternatives, and we need to be moving toward them. And it's  
2 more than setting up actual committees to study the issue. It's  
3 a matter of action.

4 And so, if Mr. Strock could agree and make some  
5 promises to this Committee today that he will, indeed, agree  
6 that there are significant pesticide exposures going on, and  
7 that he will actively work to address those, and that means  
8 action, not just quoting us back regulations that are currently  
9 on the books, then we would be happy to dance on the table and  
10 support his appointment, if he can make that promise to you  
11 today.

12 But unfortunately, the current response that we have  
13 didn't indicate that that might happen.

14 SENATOR PETRIS: Mr. Chairman.

15 CHAIRMAN ROBERTI: Senator Petris, then Mr. Strock.

16 SENATOR PETRIS: Again, I wish you were here this  
17 morning, because I have a bill that does exactly that. And all  
18 the pesticide companies were there, opposing it, even though it  
19 was primarily aimed at the agricultural area. They were talking  
20 about the urban impact, and it stresses the use of substitutes,  
21 alternatives, and so forth.

22 I'd be interested in getting the name of that  
23 particular operator, if you could jot it down and leave it with  
24 the Sergeant.

25 MS. CLAYBURGH: I'll give it to you.

26 SENATOR PETRIS: And the location and so forth, and  
27 if you want to send me a letter on it, I want to personally  
28



1 pursue that, because they're saying there are not such problems.

2 I have a different bill right now that's over in the  
3 Assembly that is aimed at protecting children in the schools.  
4 We're trying to eliminate certain poisons from being used in the  
5 schools. And I could use some help by getting this information.

6 Thank you.

7 CHAIRMAN ROBERTI: Mr. Strock.

8 MR. STROCK: Mr. Chairman, if I might say a few  
9 things, reacting to Ms. Clayburgh's statement.

10 With respect to the -- my response to her, I would  
11 again note for the Committee, that was 17 pages, prepared to be  
12 very specific. It was not an attempt to be evasive at all, and  
13 I think it was setting a standard far better than government  
14 usually meets, in my judgment.

15 My reaction to part of her -- the quote she had, that  
16 I rejected the view that we weren't committed to improving the  
17 situation with pesticides, was my reaction to her saying we were  
18 not committed to doing it.

19 We are committed to doing it. There's no other  
20 reason for a Cal EPA unless we're committed to doing it, and  
21 that was why I reacted that way, and I still would. We're  
22 clearly committed to progress in that area.

23 I'd also stress for people who look at government in  
24 general, that of all the areas of government regulation in the  
25 past 20 years -- housing, education, crime, social welfare -- I  
26 think we're working in the only one, because of leadership like  
27 people who I sit before, where we have made and have the real  
28



1 potential to make further progress.

2 With respect to the ag. commissioners, I would add  
3 that the law sets them up as the first line enforcers. We are  
4 working with them to get much more standardized enforcement by  
5 the ag. commissioners, and I think we'll make progress in that  
6 area.

7 And finally, I would simply say to Ms. Clayburgh that  
8 the point of the task force to look at alternatives is not  
9 simply a study for paper, but the whole goal is to lead to  
10 action items. And I think we can make progress.

11 CHAIRMAN ROBERTI: We will break for five minutes,  
12 then we will take Ms. Noel Otten.

13 [Thereupon a brief recess was taken.]

14 CHAIRMAN ROBERTI: We'll take up Noel Otten, then we  
15 will take up Kristi Osborn, Concerned Citizens of Dunsmuir.

16 MS. OTTEN: Good afternoon, Senator Beverly, Senator  
17 Roberti, Senator Petris.

18 It's indeed an honor to be here, being able to talk  
19 to you today.

20 Just to let you know that this is my second day up  
21 here, I was up here last week to testify and, as you know, the  
22 proceedings ran to an extension of time, and so I've given up  
23 two days of work to be here with you. And I'm not a paid  
24 environmentalist. I am a member -- I'm the President and  
25 Director of Research for a grassroots groups called Action Now  
26 in Los Angeles. So, it -- my being here today represents an  
27 extensive amount of effort on my behalf, and I would certainly  
28







1 appreciate your extending the courtesy of hearing me out,  
2 because I have a lot of important information to give to you.

3 So, if I run a little bit over time, please bear with  
4 me.

5 I understand your frustration, Senator Petris, and I  
6 wish we could be here behind you, to work with you more often.  
7 But as you know, not being paid to do this, it's extremely  
8 difficult to come up and work with our representatives on these  
9 important issues.

10 But I'm here today because it's a critically  
11 important issue that we're dealing with, the health and well  
12 being of future Californians, as well as those of us who reside  
13 in the state now.

14 I'm sure Mr. Strock is probably surprised to see us  
15 here opposing his confirmation today, since he did have Cal EPA  
16 officials respond to a list of questions we presented to him at  
17 a meeting several weeks ago.

18 Unfortunately, although the response was not lacking  
19 in quantity, there was little indication of a vision for  
20 charting a much-needed new direction in California's  
21 environmental quality issues to warrant the title bestowed on  
22 Mr. Strock by Governor Wilson as our environmental advocate.

23 We have brought a copy of that response, and we'd be  
24 glad to make it available for you to scrutinize. I will be  
25 referring to specific issues related to that response today.

26 I would like to speak about two specific issues that  
27 are central to the problems facing the new Cal EPA. Number one,  
28



1 the registration, re-registration, emergency exemption process;  
2 and number two, the risk assessment, negligible risk standards.  
3 In so doing, I hope to illustrate to you the need for a  
4 proactive approach to leadership with a common sense directive  
5 of prevention as the necessary goal in future decision making.  
6

7 The various chemical disaster episodes of recent  
8 times provide ample evidence of the inability of the  
9 registration regulatory process to provide the public with any  
10 kind of reassurance regarding the alleged safety of any toxic  
11 substance. And so, I just want to say here, and make it very  
12 clear, that we will not be reassured any longer that these  
13 substances are safe. They have proven, in more ways than one,  
14 that they are not, and we are victims of the fact that they are  
15 not.

16 On my way up here, I drove last week. We were crop  
17 dusted no less than four times on our way up the Central Valley.  
18 I have an acute sinus infection and inner ear infection as a  
19 result of that.

20 My mother was crop dusted while she was gardening up  
21 out of Marysville. She has a couple of walnut acres there.

22 My father was damaged and had to be hospitalized and  
23 bedridden for a week after he helped a neighbor spray Isotox.

24 So, there're a lot of chemical issues and exposure  
25 situations that are ongoing out there in California today that  
26 are very serious.

27 In fact, claims as to the safety of toxic substances  
28 are unwarranted. The potential for abuse of substances,



1 intentional or accidental, will always exist. Given the fact  
2 that cancers or genetic effects often begin with the alteration  
3 of a single molecule, the necessity of preventing exposures to  
4 toxic substances for which data gaps exist becomes obvious.

5 Many of the pesticides now in use, registered before  
6 1972, do not have the necessary data to support registration.  
7 Yet we continue to be exposed to these substances, despite the  
8 state's ignorance as to what adverse health effects might result  
9 from such exposures.

10 Blatant disregard for the registration process occurs  
11 under the guise of exemptions. When a pesticide is not  
12 registered for use on a particular crop or in a specific method  
13 of application, an exemption can be issued to allow its  
14 application despite the lack of data to support that intended  
15 use.

16 A recent Freedom of Information Act response from the  
17 U.S. EPA revealed that Cal EPA has been requested by the U.S.  
18 EPA to submit human study data to support the state's  
19 registration of malathion bait for use in fruitfly eradication  
20 programs. In other words, our money will be used to conduct  
21 human studies on us while the state is spraying us so that they  
22 can continue to do so in the future without having to apply for  
23 an emergency exemption. They're seeking Section III  
24 registration along with the USDA.

25 Doesn't this constitute a conflict of interest?

26 And I would be glad to make the documentation  
27 available to you. I have the data call in letter. I have the  
28







1 studies that have to be done on humans. And right here, where  
2 it says, "Company name and address," which is usually what the  
3 registrant is required to submit for the sale of this product,  
4 it says, "California Environmental Protection Agency."

5 I don't think this is the best use of taxpayer funds,  
6 and I think it's in direct conflict of interest, in that Cal EPA  
7 should be charged at looking to alternatives to aerial spraying.  
8 If they had -- if they have a vested interest in keeping up the  
9 aerial spraying of malathion on human urban populations, then I  
10 think something's terribly wrong, terribly wrong.

11 I've spent a lot of time this past two years in  
12 learning as much as possible about how the State of California  
13 conducts risk assessments and for what purposes. I personally  
14 attended most of the Malathion Public Health Effects Advisory  
15 Committee meetings. I gathered documents. I researched; I  
16 read. Like Mr. Strock, I'm an avid reader also.

17 The risk assessment process is triggered during the  
18 registration process when an adverse health effect is  
19 demonstrated in lab studies, or when public pressure  
20 demonstrates the need.

21 While touted as being objective, these assessments  
22 are subject to a host of arbitrarily determined factors which  
23 greatly influence their outcome. These factors include:  
24 initial assumptions, and those can include biased and  
25 predetermined assumptions that are nothing more than fluke  
26 guesses, honestly; the design of the analysis, there are several  
27 different ways you can analyze data to get the outcome that you  
28



1 want it to give; and the quality and the quantity of data. All  
2 of these factors play a tremendous role in determining the final  
3 outcome, shaded by the politics and the values of the authors  
4 and their superiors.

5         The problem is further exacerbated by trying to  
6 assess the economic feasibility of preserving public health. In  
7 the term "negligible risk", originally the limit was set at one  
8 in a million, and now, all of a sudden in recent years, we find  
9 that that figure has been arbitrarily adjusted to one in every  
10 one hundred thousand. So, when we're talking in terms of  
11 negligible risk, let's translate that in human terms. Would you  
12 want your child to be that one in a hundred thousand, or your  
13 granddaughter, your child?

14         I mean, the negligible risk standard has been  
15 adjusted downward, while the risk of contacting cancer in this  
16 country has skyrocketed to one in three. Look at the newspapers  
17 everyday. You see top CEOs getting prostate cancer, being taken  
18 out. Whoops, gone. And this is showing up in our older  
19 generation, younger generations. Over 28 percent increase in  
20 cancers, leukemias. Is this an acceptable standard for our  
21 children, of us as human beings?

22         It is possible, therefore, to use the risk assessment  
23 process as a means of justifying policies and protecting  
24 economic interests instead of public health. The use of highly  
25 technical language often intimidates many concerned citizens and  
26 members of the press and politicians, making participation  
27 difficult for anyone without a Ph.D., thereby facilitating the  
28





1 ability to mislead and confuse the public.

2 Risk assessment is ultimately undemocratic as well as  
3 unscientific. And to give you a prime example of that, you  
4 might be familiar with the California Department -- the  
5 Department of Health Services, which is now the Office of  
6 Environmental Health Hazard Assessments -- risk assessment  
7 document on malathion where they have an ocular consensus  
8 statement stating that concerns regarding ocular toxicity of the  
9 spraying are unwarranted.

10 I have a peer reviewed EPA document saying that they  
11 think all organophosphates have the potential to cause serious  
12 ocular damage, signed onto by EPA scientists.

13 So, we have a direct conflict here in the information  
14 that's being given from the scientific community itself. So,  
15 who's right?

16 Add to this inability of the current assessments to  
17 consider issues like: synergism, what happens when one chemical  
18 mixes with a lot of different chemicals; biocumulation, what  
19 happens when we eat fish that are contaminated and go up the  
20 food chain, or dairy cattle that have been eating malathion-  
21 covered hay that we're allowing 135 parts per million to go  
22 onto; the risk of so-called inert ingredients, which are  
23 sometimes more toxic than the active ingredient that's being  
24 considered in the risk assessment.

25 And one has to wonder upon what information public  
26 reassurances of health protection are based.

27 Furthermore, certain immune and nervous system  
28





1 effects, as well as genetic effects, may not occur until long  
2 after the inducing chemical has left the body, sometimes well  
3 after a study has been concluded. And some animals, like rats  
4 and mice, have enzymes in their blood that help them detoxify  
5 substances, when humans do not, making them poor models for  
6 extrapolating potential risks to humans.

7  
8         There have been no neurotoxicity testing standards  
9 included in the risk assessment process. EPA's now drafting  
10 acute neurotoxicity standards. And people are being  
11 neurotoxically damaged from exposures. They're being told this  
12 is in their mind.

13         We have direct evidence that it's not in your mind at  
14 all. Increased irritability and insomnia, things that you  
15 wouldn't ever associate with a chemical exposure being  
16 perpetuated. Children's attention span deficits. Learning  
17 difficulties in school. It's unbelievable the importance of  
18 neurotoxicity, and it hasn't even been considered in the risk  
19 assessment and is just now coming into consideration, while we  
20 still endure exposures to neurotoxic chemicals. All  
21 organophosphates are neurotoxic chemicals.

22         Prevention of exposures through adequate training of  
23 the applicators, of the users, of the farmworkers and bystanders  
24 is therefore essential to the protection of public health. I  
25 saw no mention of any of these issues in Mr. Strock's response  
26 to our concerns.

27         If Mr. James Strock cannot understand that a real  
28 problem exists in the current pesticide regulatory process, we



1 are left no choice but to oppose his confirmation.

2 If he is willing to acknowledge the need to chart a  
3 new course for the true protection of public health, then we can  
4 begin to work together toward that mutual goal.

5 CHAIRMAN ROBERTI: Thank you very much, Ms. Otten.

6 MS. OTTEN: Thank you.

7 MR. STROCK: Mr. Chairman, could I say a couple of  
8 things?

9 CHAIRMAN ROBERTI: Yes.

10 MR. STROCK: One is with respect to risk assessment,  
11 there is a great need to make certain that the risk assessment  
12 work is used properly, and that it is followed by uniform  
13 protocols across the various areas within environmental  
14 regulatory agencies. That's one of our highest goals, and we're  
15 hoping in this very tough budget process to have that office  
16 fully funded to do that well.

17 CHAIRMAN ROBERTI: The next witness is Kristi Osborn.

18 MS. OSBORN: Hi. Thank you for letting me move up  
19 the list.

20 CHAIRMAN ROBERTI: Yes.

21 MS. OSBORN: I know we're kind of getting tired from  
22 being here all day. I'll try and make it brief.

23 I feel like there's been a little bit of back patting  
24 going on, and it seems that the Dunsmuir incident is getting a  
25 lot of press in promotion of this confirmation.

26 And I'm from Dunsmuir. The Cantera spill was three  
27 miles upstream from my house, and I have a little different  
28



1 picture of it.

2           There was, as I'm sure most of you are aware of,  
3 there was a derailment at Cantera Loop near Dunsmuir. And  
4 19,000 gallons of metam sodium was dumped into the river.  
5 Sterilized -- it killed everything in the river, upsetting the  
6 food chain for many years. Many people became ill. Many people  
7 are still ill.

8           Metam sodium was originally developed for chemical  
9 warfare, and now they're using it to grow our food. Doesn't  
10 make sense to me. Yet, it is still not listed as a hazardous  
11 substance.

12           Where was Cal EPA around the time of the spill? They  
13 were in Dunsmuir, advising residents and vacationers that  
14 everything was safe. They opened the river to swimming less  
15 than a week after the incident. Yet there are still, as of last  
16 December, traces of MITC in the vegetation lining the banks of  
17 the river.

18           We don't know if there are levels that are  
19 undetectable, and that whether or not those levels can affect  
20 people. It seems that low concentrations of this chemical can  
21 affect people because people are still sick. People are still  
22 experiencing symptoms.

23           It seems that an incident of this magnitude should  
24 have commanded Secretary Strock's full attention, and we did get  
25 him to come up and visit seven months after the derailment. He  
26 came. We had a meeting, and he met with some selected  
27 politicians for about an hour-and-a-half. Then met with  
28







1 citizens and some sympathetic city council people in Dunsmuir  
2 for ten minutes and left.

3 It seems that there should more action in an incident  
4 of this magnitude. There was no evacuation of the area.

5 Now, this derailment coincided with the formation of  
6 California EPA, and it was a golden opportunity to show what the  
7 organization could do.

8 We didn't see that happen. We saw people saying,  
9 "It's okay, it's okay, it's okay. There's no long-term  
10 effects."

11 Well, we're nearly a year after the incident. There  
12 are long-term effects. There are a lot of sick people still.

13 Hindsight's 20-20, and hindsight, the California EPA  
14 has told us over and over again, "Yes, we should have  
15 evacuated," but that doesn't help people now. There weren't an  
16 evacuation -- there wasn't any kind of evacuation. Why did that  
17 not happen?

18 Where was the information? We had no information for  
19 weeks and weeks and weeks, and even still there is  
20 misinformation being circulated about what actually happened,  
21 and who's responsible for what.

22 Cal EPA was a new agency at the time of the incident;  
23 however, these people were trained. They were from other  
24 agencies. They knew what they were doing. Yet, we were still  
25 exposed to this chemical repeatedly.

26 There are no safe levels of metam sodium. There's  
27 been none established. Yet they could tell us it was safe.  
28



1                   This is the department that we're speaking of here,  
2 that's coming and telling the residents, "It's okay."  
3

4                   I urge you to consider the miscarriages, suicides,  
5 and all the ill people that were exposed to this chemical  
6 unnecessarily when considering this confirmation.

7                   Where is Cal EPA now? Are there still detectable  
8 levels? We don't know. What are they doing right now to  
9 protect the environment in Dunsmuir, to protect the residents in  
10 Dunsmuir? Nothing as far as I know. We have not had any visits  
11 for quite sometime.

12                   I'd like to urge you to be an example of leadership.  
13 Cal EPA has potential to do great things, and I really hope that  
14 there is some leadership that can prevent a disaster like this  
15 from happening again.

16                   Thank you.

17                   MR. STROCK: Mr. Chairman, could I please make  
18 several points?

19                   CHAIRMAN ROBERTI: Yes, please.

20                   MR. STROCK: The first, despite what was said, I was  
21 at Dunsmuir before Cal EPA was created. I was up there as soon  
22 as this occurred. That was not correct. That was my first  
23 time.

24                   Seven months later, we had every possible person we  
25 could who'd be useful to this on both the health and on the law  
26 enforcement side there immediately. And I think they did a very  
27 good job under very difficult circumstances.

28                   And I would also add that also, despite what was



1 said, I in fact am going back there in a matter of about two  
2 weeks, because one thing we want to try to do is not just be  
3 involved when the environmental assault has occurred, but to be  
4 back when the different events, when the town is trying to get  
5 itself back together.

6 So, I hope that the Committee will be mindful. I  
7 think we had a good record under very difficult circumstances  
8 there, and the public should have confidence in it.

9 CHAIRMAN ROBERTI: The next witness is Bradley Angel,  
10 Toxic Campaign Director for Greenpeace.

11 MR. ANGEL: Mr. Chairman, Members of the Committee,  
12 thank you for giving me the opportunity to take a few minutes to  
13 share some very important information with you that I hope, if  
14 you have an open mind, will convince you to vote a strenuous no  
15 on the confirmation of Mr. Strock.

16 And it's with great disappointment that I have to say  
17 that, because I sat here and heard, as you did, some fine words  
18 said about Mr. Strock. I, like everybody else in the state, had  
19 high hopes about the California EPA, and I still do.

20 This state should know better. We have a legacy of  
21 poisoned communities in this state, not just due to polluting  
22 industry, but due to the outright negligence and misdirection of  
23 prior state agencies and federal regulation regarding toxics in  
24 our communities: from the Stringfellow acid pits, to the cancer  
25 cluster of Rosamond; from the children with cancer in McFarland,  
26 to all the dead people in Casmalia, California. We had hoped  
27 those days were behind us.







1           It was interesting to me to be sitting here and  
2 listening to most of those in support of Mr. Strock, all from  
3 these different institutes for business and the environment.

4           Well, I want to remind people that this is not --  
5 we're not here ratifying somebody for the head of the Chamber of  
6 Commerce. We are ratifying or not ratifying somebody who is  
7 supposed to provide the vision and leadership to protect  
8 California's environment. We're talking about life and death  
9 issues here. And this is not the Chamber of Commerce, and the  
10 profit motive has to be taken out of our calculations about what  
11 needs to be done to protect the environment.

12           Mr. Peter Weiner identified himself as an attorney,  
13 and indeed, he's an extremely fine attorney of the highest  
14 caliber. And he spoke in support of Mr. Strock.

15           What he conveniently omitted is, Mr. Weiner is also a  
16 representative for Dow Chemical, which is -- currently has an  
17 application for a hazardous waste incinerator before Mr. Stock's  
18 Agency.

19           Mr. Weiner said that the Cal EPA is incredibly  
20 accessible. Well, maybe they're incredibly accessible to the  
21 polluters of this state, like Dow Chemicals, like the Rhone-  
22 Poulencs, like the Chem Waste Managements, but I would argue  
23 that in fact, under Mr. Strock's tenure for the last year, what  
24 we have now seen and can document -- and I can provide you some  
25 documents on this -- is in all out attempt to gut environmental  
26 regulation in this state, to push through dangerous polluting  
27 waste disposal projects, such as hazardous waste incinerators,  
28



1 and to take action that will have very real impact of limiting  
2 public review of these projects and public access to the  
3 projects.  
4

5 In California today, there is one gigantic hazardous  
6 waste incineration operation that's been going on for ten years,  
7 over the vehement objections over the last few years of  
8 the public. This is the National Cement's Systech facility in  
9 Lebec.

10 And yes, indeed, I too was surprised to see  
11 Mr. Strock at the National Cement propaganda meeting a week ago  
12 Monday, where he sat at the very back of the room and did not  
13 identify himself and make himself available voluntarily to the  
14 public.

15 But no -- no surprise why, because we've been leaked  
16 by a very conscientious employee of the United States  
17 Environmental Protection Agency a document that tells what the  
18 state's real motive is regarding the National Cement  
19 incinerator.

20 I want to remind you that this is a facility that,  
21 just a couple years ago, was out of compliance approximately 166  
22 days in one year. This is a company that has exceeded its  
23 emission levels for heavy metals, dioxins and furans. This is a  
24 company who the state last year renewed their permit without a  
25 public hearing. There has not been an environmental impact  
26 report.

27 This is a facility who Mr. Strock's aide, Val Siebal,  
28 assured not only myself but people from the community that a



1 decision on an environmental impact report would be made last  
2 October. Well, guess what? We were never gotten back to [sic].

3 Then we pressed it, "Well, we'll tell you by  
4 January." Well, guess what? There's still no decision.  
5 They're stalling.

6 We have a document here, an internal EPA memo, U.S.  
7 EPA memo. The landowner for the National Cement facility, where  
8 it's located is Tejon Ranch. Because of their serious concerns  
9 about the dismal operations of this incinerator operation, they  
10 didn't want to sign the new Part B RCRA permit application.

11 The state, in the words -- and I will quote you -- of  
12 the United States EPA, quote/unquote:

13 "... has indicated that they ..."  
14 the state,

15 "are willing to entertain any option  
16 that will keep the facility in  
17 operation."

18 And it goes on to say, and I quote:

19 "The state does not want to lost the  
20 capacity or the revenue for the  
21 facility fees."

22 And it goes on to say, and I quote:

23 "The state ..."

24 and I quote,

25 "The state is willing to stretch the  
26 regulations in order to keep  
27 National in operation."  
28





1           This is a disgrace. This is using my tax dollars,  
2 and yours, to try -- what they were trying to do is get the EPA  
3 to go along with their plan to approve the Part B RCRA  
4 application without the legal requirement that's etched in stone  
5 that the landowner sign a permit.

6           That is not the responsible role, I would argue, and  
7 I would offer to you, for the California EPA.

8           At the end of last Monday's meeting in Lancaster, a  
9 reporter for the L.A. Times asked Mr. Strock about this.  
10 Mr. Strock admitted that it was a very regrettable and an  
11 improper for the state to be doing that, and that it didn't  
12 reflect the state's position. I was very glad to hear that.

13           Mr. Strock shocked me when I read in print in the  
14 L.A. Times last week, that state Health officials have eased  
15 their backing for incineration, now perceiving it as a limited  
16 rather than potential widespread remedy. I wish that was true.

17           Mr. Strock, I'd like to maybe refresh your memory  
18 with this internal state Cal EPA memo that was also leaked to us  
19 by a concerned employee of yours. I'll give you a copy.

20           And in this, which we've been waiting for the  
21 appropriate time to bring to you responsible Legislators'  
22 attention, like yourselves, this memo documents the Cal EPA  
23 secret plan to push through incinerators. This document states  
24 that, and I quote:

25                    "In recent years, several  
26                    incineration projects were proposed.  
27                    However, at this time only two  
28



1                   remain in the permitting process

2                   ..."

3 And they're referring to facilities proposed in Martinez and  
4 Kettleman City.

5                   "... both facing serious  
6 challenges."

7 They explore -- the Cal EPA explores the options, and they say,  
8 number one, improve the acceptability of incinerators. That  
9 would be pretty hard, because we know the industry's track  
10 record.

11                   It says, number two, seek legislation which would  
12 limit the challenges to projects which would meet California's  
13 standards.

14                   And it says, number three, explore having the State  
15 of California play a more active role in the siting and  
16 development of incinerating projects, including giving more tax  
17 money to incinerator companies --

18                   CHAIRMAN ROBERTI: Mr. Angel, what you're saying is  
19 very important, and I don't want to --

20                   MR. ANGEL: I'll wrap it up.

21                   CHAIRMAN ROBERTI: Well, no, we're going to have to  
22 break for caucus.

23                   MR. ANGEL: Could I finish my comments in one minute?

24                   CHAIRMAN ROBERTI: We'll let you finish your  
25 comments, then we're going to break and come back again.

26                   MR. ANGEL: That's fine. I'm near wrapping up. I  
27 appreciate it.  
28



1 But they also -- the Cal EPA's advocating siting  
2 assistance, site acquisition, and ownership of these types of  
3 projects. Now, which one is it? Which one is it? Is it the  
4 public comments made to the L.A. Times, or is it these secret  
5 government memos that were fortunately leaked by responsible  
6 government employees?

7 MR. STROCK: Mr. Chairman, would I --

8 MR. ANGEL: Could I finish? I'm almost done.

9 Lastly, Mr. Strock's agency is right now embarking on  
10 an all-out effort for one-stop permits and permit streamlining.  
11 What that will do is limit public review. It will limit public  
12 hearings. It will limit public access to the process,  
13 particularly when in California waste disposal projects don't go  
14 into affluent White communities, but are virtually always  
15 proposed in communities of color, and often Spanish-speaking  
16 communities, like the Vernon project, like the Kettleman  
17 project. We are talking about the state pursuing practices  
18 which will put them in bed with environmental racism.

19 We call for accountability. We call for true  
20 nonbiased decision making.

21 And I think the documents that we've now got, I'd  
22 like to make them available to you, are very troubling. I wish  
23 we didn't have them, but we do.

24 CHAIRMAN ROBERTI: Mr. Strock.

25 MR. STROCK: Mr. Chairman, I realize you want to go  
26 into caucus.

27 Would I have a chance to completely respond when you  
28





1 return, if I might, or is it better now?

2 CHAIRMAN ROBERTI: Yes.

3 MR. STROCK: There are a great number of issues here  
4 that I'd like to correct.

5 CHAIRMAN ROBERTI: We have to go into caucus, and  
6 we'll come back and you'll be able to respond at that point.

7 MR. STROCK: Thank you.

8 CHAIRMAN ROBERTI: We are now in recess until call of  
9 the Chair.

10 [Thereupon a recess was taken.]

11 CHAIRMAN ROBERTI: The Senate Rules Committee will  
12 come to order.

13 We had concluded, before we recessed, with Mr.  
14 Bradley Angel's testimony, Toxic Campaign Director for  
15 Greenpeace.

16 Mr. Strock, would you like to respond?

17 MR. STROCK: Yes, thank you very much, Mr. Chairman.

18 If I might make several points about Mr. Angel's  
19 testimony. First, with respect to the specific involvement at  
20 National Cement, I had received a great number of letters, and  
21 indeed, very carefully go through these letters and questions we  
22 get, and I became very concerned about certain things we saw in  
23 that process of consideration there with respect to that  
24 incinerator.

25 As a result of that, we've taken a number of steps.  
26 One is to make an adjustment in the reorganization for the  
27 Toxics Program, to make certain that people who are involved in  
28



1 advocating technologies are kept separate from the permitting  
2 decision process in a much clearer way than is now the case.

3         The individual that wrote the letter that Mr. Angel  
4 referred to, and I share his reaction to that letter, has been  
5 recused from any further involvement in this matter.

6         Further, the position the Department is taking with  
7 respect to the U.S. EPA regulation Mr. Angel referred to has  
8 been made clear, that we want nothing more than for U.S. EPA to  
9 enforce the regulation they have, period. Nothing more to it  
10 than that.

11         If I might add a couple other things, and I'll resist  
12 the temptation to try to go through every single point -- he's  
13 very eloquent -- several points, though.

14         One is, I'll just state, to give you an idea of where  
15 things -- what things look like, when I say that one of the key  
16 applicants for an incinerator in this state right now, Rhone-  
17 Poulenc, has gone publicly on the record fighting our efforts to  
18 take over authorization of the federal RCRA program because they  
19 do not think they will get enough support from our office. And  
20 that's what they want. They have the exact opposite goal.

21         The fact is, we're not going to do anything in either  
22 case, except the right thing. But I think it's important to  
23 bear in mind so no one misinterprets how we're viewed by people  
24 on that side of things.

25         I'd also like to say briefly with respect to the  
26 specific document that Mr. Angel referred to, and this is -- I  
27 believe you have one for the record. I don't recall this, but  
28



1 it appears accurate. I'd like to explain what it is, because  
2 it's not at all what Mr. Angel said.

3 Last year, and I do this still a great deal, I will  
4 go to the various parts within Cal EPA and ask them to come up  
5 with ideas. Some are good and some are bad. Some haven't  
6 received light of day again because they're not good, and that's  
7 the case this one fell into. There was no follow-up whatsoever  
8 with this.

9 And I'd like to make clear that what I said last week  
10 to the Los Angeles Times was the first statement I have made  
11 about incineration, and that is our -- that's certainly my view.

12 As you know, Mr. Roberti, because you're a leader in  
13 this area, incineration has got to be a tool of last resort.  
14 First, the effort has to be made to achieve prevention, and I  
15 think we're making some improvements there. Second,  
16 minimization. Third, recycling. Treatment if necessary. But  
17 disposal, whether it's land-based or incineration, has to be the  
18 last -- the last thing we would do. And that is certainly how  
19 we approach this.

20 And I just want to say in closing on this that we  
21 want to make every single effort to do this with the public  
22 health as first consideration.

23 And one truly final thing, if I might, I can't  
24 resist. He made the comment about his concern about the Cal EPA  
25 trying to work on economic issues as well as environmental.

26 If I could put that in the perspective of where I see  
27 it from on two issues, one is with respect to permitting reform.  
28







1 As you're well aware, leaders here, yourself and others, have  
2 put together the highest environmental standards in the world  
3 for most activities. Yet the permitting process, which is only  
4 a goal to get to those standards, is often so difficult, that  
5 unless you can afford a lawyer who makes more money than most  
6 people look at buying for help, or unless you just are totally  
7 schooled in this process, you frankly can't get a straight  
8 answer. There's got to be ways to simplify that, and I think we  
9 can.

10 But we would seek your help, because if you have  
11 ideas, I'd really like to see them and work together on it,  
12 because there's no secrets here at all. We're trying to do  
13 something better and open.

14 Finally, I really hope people will consider what's  
15 happening across the whole world right now on this question of  
16 environment and the economy. Just last week, it was quite a  
17 breakthrough that at the Rio Conference, it was accepted for the  
18 first time, as part of the dialogue, that environment and  
19 economy truly do go hand-in-hand, looking toward the future.

20 One part that particularly intrigued me was that  
21 Japan made the announcement that over the next five years, they  
22 would commit to more than \$7 billion in aid for environmental-  
23 related development. And the fact is, a big part of what  
24 they're doing is developing markets for new technologies that  
25 protect the environment but also have economic benefits for  
26 Japan.

27 California has been the lead in that area, and as  
28



1 you're well aware, with the loss of other types of jobs, we  
2 would hope to assist in developing clean industry to that  
3 extent.

4 Thank you for letting me talk at some length.

5 CHAIRMAN ROBERTI: Thank you.

6 MR. ANGEL: If I could take one minute.

7 We would look forward -- I mean, we do look forward  
8 to working with the Cal EPA, rather maybe the Director of that,  
9 whether it be Mr. Strock of somebody else. We will always  
10 insist on absolute protection of the health of our communities.  
11 We will always insist on full participation of the public.

12 The challenge is going to be, in Martinez,  
13 California, where the City of Martinez has declared the process  
14 dead, will the state respect that process, and also consider it  
15 dead, or will you negotiate with Rhone-Poulenc behind the door?

16 In Kettleman City, I want to know how come the state  
17 has refused to translate their permit documents into the  
18 language the people of that community understand. That is  
19 public participation.

20 In Pittsburg, you're going to hear a plea from people  
21 form that community for another public hearing, because a lot of  
22 people, it turns out, thousands, had no idea about the Dow  
23 incinerator proposal.

24 You know, that's the type of thing we were not  
25 seeing.

26 And it troubled me also, and the last thing I'll say  
27 is that when you went to Dunsmuir, I was also in Dunsmuir just  
28



1 days after the spill at the request of people. And it was  
2 interesting that Kristi Osborn didn't know you were there. I  
3 met with Kristi and a lot of other people who were feeling sick  
4 at the time, and I shared their shock and utter incredulousness  
5 at -- when the Cal EPA was silent, when business interests  
6 pressured the various government agencies to open that river for  
7 swimming and pretending that the problem was away.

8 And I hope that we've all learned something, and will  
9 not allow that to happen again.

10 MR. STROCK: If I might say one more thing, at the  
11 risk of appearing to be "Family Feud".

12 MR. ANGEL: That was a response, but go ahead.

13 MR. STROCK: You and I have corresponded on this, and  
14 I just frankly -- at length, and I --

15 MR. ANGEL: That's right. You called my concerns  
16 "nonsense."

17 MR. STROCK: No, "nonsense on stilts."

18 [Laughter.]

19 MR. STROCK: It was meant to emphasize -- and I mean  
20 to be -- because I just really -- it was not correct, and I just  
21 disagreed firmly on this, and I want to be very clear for the  
22 record.

23 And that's all I'll say.

24 MR. ANGEL: And we considered the behavior of the  
25 various government agencies outright irresponsible, and we will  
26 continue to pressure all the agencies to protect the public  
27 health and environment, which we're not seeing.







1 Thank you very much.

2 CHAIRMAN ROBERTI: The next witness is Dr. Garry  
3 Flint, Citizens for a Healthy Ukiah.

4 DR. FLINT: I think I've rewritten my comments three  
5 or four times.

6 Thank you for allowing me to say a few words here.

7 I'm a psychologist in Ukiah, and I've lived there for  
8 20 years.

9 I want to testify in opposition to the confirmation  
10 of Mr. Strock as Secretary of the Cal EPA.

11 He's been cited of having great feelings for the  
12 government and industry, and I read through his papers for his  
13 proposal to streamline the permit process, and I was really  
14 concerned about permit agreements that would be able to be made  
15 in one area, and then to extend to other areas where the,  
16 perhaps, citizens in that community have different needs, or  
17 geography, or conditions to deal with.

18 That seems to be an opportunity to disallow public  
19 input.

20 The pay for facilitating, speeding up documents,  
21 that's a real -- although he addresses that some -- that's a  
22 real opportunity for clouding of judgment in making decisions  
23 about what's good for the public. That a person who receives  
24 money to speed a process is almost on a bandwagon, and that's a  
25 dangerous process.

26 Administrative issuance of permits, I can envision  
27 administrative variances given, in addition to administrative  
28



1 permits. Once variances are given, or permits for things are  
2 given, it's -- it takes a lot of public uproar to make changes.

3 I worry that that procedure, if enacted, is going to  
4 again rip the public off of having input into the permitting  
5 process.

6 His reorganizational proposal doesn't address or  
7 facilitate community input. I live in a small town. It's  
8 Ukiah, the home of Masonite. It's been there since 1950, and  
9 it's been polluting since 1950.

10 They, for years, have been consistently over the --  
11 exceeded the limits of pollution and recently obtained a  
12 variance to continue polluting at high levels. They're pampered  
13 by the County Supervisors, and for the last three years, they've  
14 been late on a hot spot document that they're supposed to  
15 prepare, and it's not going to be ready until next year.  
16 They've been late on this document, and it -- and they aren't  
17 being fined for it.

18 In the '70s, they were given a permit to burn 900,000  
19 gallons of number 6 residual oil per year. In 1991, they burned  
20 3.8 million gallons of residual oil. This was -- they had  
21 consistently been burning around an average of slightly over 3  
22 million gallons a year.

23 Analyzing the 1991 usage, they put out 57,000 pounds  
24 of various metals. These metals that go into the atmosphere, I  
25 assume, and filter down on to the ground, the streets, and the  
26 water, and we all get to deal with that.

27 They have a history of serious chemical and fuel  
28



1 spills at the plant. The last reported were, I believe, in  
2 1989.

3 The enforcement for clean-up -- for cleaning up these  
4 spills is lax. They don't move any dirt out there. They found  
5 six inches of diesel fuel in a test well that's less than 2,000  
6 yards from a city well. The requirement was to keep testing,  
7 and eventually the well stopped showing diesel fuel.

8 They use a chemical waste -- they have a chemical  
9 waste sludge that's taken from settling ponds that's the remains  
10 of toxic chemicals that are washed off of molds and equipment.  
11 This sludge is spread on county roads. It's marketed as feed  
12 supplement for cattle and poultry in the Sacramento Valley. You  
13 probably eat this -- this meat.

14 It's also burned for fuel in the Masonite boilers.  
15 They burn it on wood chips.

16 As far as I know, chemical contents of this sludge is  
17 not monitored by any agency. We haven't found any analysis of  
18 this sludge. They call it Masonex.

19 About two-and-a-half years ago, Masonite started a  
20 molded door line. In 1987, they used 57,000 pounds of linseed  
21 oil a year. Last year they used 2.5 million pounds, in 1991.  
22 Linseed oil breaks down to form --

23 CHAIRMAN ROBERTI: You have 30 seconds.

24 DR. FLINT: -- aldehydes. And there're a lot of  
25 people sick in Ukiah with serious illnesses. A lot of cases of  
26 lymphoma, which is atypical.

27 What we have in Ukiah is a good-ol'-boy town with the  
28





1 supervisors, the fire departments, the city officials, and  
2 county employees all protect Masonite because we're held hostage  
3 for 400 jobs there.

4 What we need is a strong protection agency that will  
5 step in and make companies in little town like this accountable  
6 for their pollution, and we don't have that. And we haven't had  
7 that in the last year or in the last 20 years.

8 CHAIRMAN ROBERTI: Thank you very much.

9 DR. FLINT: Thank you.

10 MR. STROCK: Sir, may I just put one thing on the  
11 record on this.

12 For the doctor, if I could possibly -- if we could  
13 trade cards after, because if I do have the good fortune to be  
14 approved, I'd like to follow-up with you.

15 We heard about this last week, and we'd heard about  
16 the air problems over the past several months. And our head of  
17 enforcement is right now meeting with people on this.

18 Again, I prefer just to follow-up with you, if I  
19 might, further.

20 DR. FLINT: Okay, thank you.

21 CHAIRMAN ROBERTI: Lyle Talbot, Health Risk  
22 Assessments.

23 MR. TALBOT: Thank you, Committee Members.

24 Lyle Talbot, 50 years in California, and the first  
25 time in this building. Wonderful feeling.

26 I'm also from the Antelope Valley, where we have the  
27 home of the only toxic incinerator that makes cement as a side  
28



1 business, and home of the Antelope Valley winds that, if you've  
2 ever traveled through that area, you know about those winds.  
3 The combination of a toxic incinerator and those horrendous  
4 winds create a lot of problems that start in Kern County and  
5 come into the Antelope Valley, the Los Angeles County portions.

6 I'm here to oppose the confirmation of Mr. Strock.

7 And behind me, this gentleman will show you a map  
8 that was prepared by the Middlehauser Corporation in conjunction  
9 with this health risk assessment. The little items -- the title  
10 of the map is, "Sensitive Receptors". They're represented by  
11 those dots and radial lines off to the left. They have their  
12 appropriate numbers keyed down here, on the bottom right-hand  
13 corner of the map. But it's pretty hard to tell one of those  
14 dots from the other when you're here in Sacramento.

15 A sensitive receptor, according to definition, if a  
16 person between the ages of zero and seven, or a senior citizen.  
17 Now, if you're eight years old, I guess you're an adult, because  
18 they do worry about people from zero to seven in day care  
19 schools and elementary schools.

20 Well, we -- in their haste to put together this  
21 theoretical math modeling document which shows no contact with  
22 actual receptors downwind, we would like to show you some  
23 receptors who are actually human beings and have signed their  
24 name to a paper. They're not just a dot on the map.

25 These people have complained for years about the  
26 burning of toxic waste out there, and they're the closest actual  
27 receptors; they're not dots on a map. And we could not get  
28



1 anybody in state government to accept these surveys and  
2 complaints from people. Well, they're here now if you'd like to  
3 look at them.

4           In their haste to put together this theoretical math  
5 modeling document, which shows no contact with the people, as I  
6 said, Middlehauser put wrong directional bearings to these  
7 theoretical sensitive receptors. They stated their location in  
8 the book as being northeast from the plant, but their actual  
9 locations are northwest from the plant, give or take 90 or 180  
10 degrees.

11           Now, we wonder what other flaws are present in this  
12 document when they cannot plot correctly on the map and give  
13 directions in this text. I don't think they've paid a lot of  
14 attention to the make-up of it.

15           We have a problem with that kind of shoddy work, so  
16 typical in this document. We like to assign faces to those  
17 dots, like these faces of kindergartners. This was taken in  
18 1982. They're not Mojave ground squirrels, and they're not  
19 spotted owls, but they're real children's pictures, taken in the  
20 year '82, when DHS issued the permit for this toxic incinerator  
21 based on this negative declaration. It appeared in the  
22 newspaper in another city, in another county, just this size.  
23 It was in the Bakersfield Californian.

24           There was no notice to the receptors downwind, and a  
25 picture's worth a thousand words, so, may I have the pictures,  
26 please.

27           Excuse me, these are pictures, aerial views, and  
28







1 there's the cement plant just above that blue line. Prevailing  
2 winds blow from Kern County into Los Angeles County.

3 Now, Kern County issues the permit, the air quality  
4 permit for this operation. But we feel the effects over in  
5 Supervisor Antonovich's Fifth District in Los Angeles County,  
6 and he has written several letters to the state about this  
7 issue.

8 The blue line to the left of the photo are the  
9 California Aqueduct that pass one-and-a-half miles from the  
10 plant itself, so any emissions from the plant are bound to fall  
11 into those open canals.

12 Just as a matter of orientation, here's a blowup of  
13 the aerial shop of the cement plant, showing the bag house. The  
14 bag house does not have a stack, does not have a scrubber. This  
15 was an old cement plant that has been in operation for 15 years,  
16 and they introduced burning of toxic waste based on this  
17 negative declaration. And it is not a state-of-the-art  
18 incinerator. We wouldn't have much of a leg to stand on if it  
19 had all the modern technologies that's available.

20 And that's where 74 percent of all of California's  
21 toxic waste is burned.

22 It took us --

23 CHAIRMAN ROBERTI: Mr. Talbot, you have 30 more  
24 second.

25 MR. TALBOT: It took us a few years to get organized,  
26 but we're here today to make our stand.

27 In summary, we'd like to see California EPA a  
28



1 California EPA who's out there protecting us instead of sleeping  
2 with our enemy.

3 And I'd like to leave with the Committee a letter  
4 from the California Rural Legal Assistance Foundation, sent to  
5 Mr. Jim Strock. I'm not sure how far it's been circulated above  
6 his office. We'd like the Committee Members to look at it, and  
7 where they actually say there it's the law that you must have an  
8 environmental impact report on a plant like this.

9 Thank you for your time, sir.

10 CHAIRMAN ROBERTI: There seems to be an awful lot of  
11 concern about what has been happening in the Antelope Valley and  
12 Rosamond area. I think people are just genuinely, genuinely  
13 concerned about their health.

14 Not to say the other areas that have been here aren't  
15 equally concerned, but it just seems like this is an especially  
16 derelict area.

17 MR. TALBOT: You know, could I add one more thing?

18 The state gets federal money to promote the toxic  
19 waste business as they conduct their business.

20 If we could use some of that federal money, say, a  
21 small percentage, 5-10 percent each year, and let's put that as  
22 incentive money to industry to show us programs where they  
23 reduce the amount that has to be incinerated, and if you dangle  
24 some bucks out in front of that industry, I believe they will  
25 reply and respond with constructive methods of reduction.

26 CHAIRMAN ROBERTI: thank you.

27 MR. STROCK: Mr. Chairman, I would just like to add,  
28



1 I have been following carefully, reading the statements of  
2 Mr. Talbot. I've read the letter that you referred to that just  
3 came.

4 Again, we've taken those steps I mentioned on the  
5 recusal, and so forth, to make sure the decision process does  
6 not have the quite legitimate doubts, I think, that have been  
7 raised.

8 And the immediate issue now is a precedent setting  
9 one across all the programs, is whether or not an EIR is  
10 required. And we're working on that at two levels. One is on  
11 the technical determination being made as to whether or not the  
12 health risk assessment Mr. Talbot referred to would lead you to  
13 that, or second, does the law require one in any event.

14 We intend, and this is the first I've committed on  
15 this because I was not present at those prior commitments, but  
16 our expectation is to -- to have that by this autumn, when there  
17 is a full decision on it.

18 MR. TALBOT: That's about a year after the first  
19 promise we had on that decision, sir.

20 MR. STROCK: I've got to say that you'll have to  
21 wait.

22 I hope you'll see, I am not defending. In fact, the  
23 reason I got involved so directly is because it's clear there  
24 are some problems in how it's been done, that I take your point.  
25 And I'm trying to get involved now to improve it, and also to  
26 change the process so this doesn't happen again in terms of  
27 people not having full confidence that the public health is the  
28







1 first concern of a permit. If that is shaken, that cuts to the  
2 core of the program.

3 So, that's why I'm focused so hard in trying to  
4 listen and respond.

5 MR. TALBOT: Well, whoever is confirmed in this post,  
6 we certainly hope that they respond in that way.

7 CHAIRMAN ROBERTI: Thank you, Mr. Talbot.

8 MR. TALBOT: Thank you.

9 CHAIRMAN ROBERTI: Next is Mr. Don Offield.

10 MR. OFFIELD: Thank you, Mr. Chairman and Committee  
11 Members.

12 Your stamina is a tribute to your belief in the  
13 system, and I appreciate the time to speak to you.

14 I'm here on behalf of a citizen organization called  
15 CAPIT, Citizens Against Pollution and Industrial Toxics. It's  
16 an off-the-cuff group of people that was put together actually  
17 several weeks ago as a response to the Dow incinerator project,  
18 which has been in the works with the California EPA and the  
19 federal EPA for quite some time.

20 I don't know if many people know where Pittsburg is.  
21 It's in the Delta, situated between Concord and Antioch, cities  
22 of about 50,000, primarily minority citizens.

23 This incinerator is not only going to affect  
24 Pittsburg by burning 14 million pounds of toxic waste a year,  
25 but it's going to affect a very primarily and dominantly White  
26 middle-class community of Antioch due to the prevailing winds.  
27 These two communities are coming together in opposition,  
28



1 obviously, to the incinerator.

2 I'd also like to say that I'm not an  
3 environmentalist. I'm not a toxicologist.

4 I'm a Special Agent for the Drug Enforcement  
5 Administration. I spent the last eight years of my life running  
6 around the State of California, and actually all over the  
7 country, fighting people who pour sludge from the manufacture of  
8 illicit chemical substances, like methamphetamines, into our  
9 lakes, into our sewer systems, into our streams.

10 And I think you can only imagine that, while I'm out  
11 there supposedly defending the public, I come back to a  
12 community and wonder who's there to defend me. I'm assuming  
13 that it's going to be Mr. Strock.

14 I ask you tonight, that if you're going to confirm  
15 Mr. Strock, that you ask yourself one thing. Is he the person  
16 that you would want to represent you if you had a toxic waste  
17 incinerator proposed for your community?

18 I attended all the meetings. I heard about all the  
19 risk assessments. I heard about all the things that they said  
20 were acceptable to our communities.

21 We don't agree with that. And in fact, Mr. Strock's  
22 comments tonight that, you know, incineration is the last  
23 resort, that the public health is a major concern, has not been  
24 borne out by the process that was taking place in order to get  
25 this permit through.

26 The citizens of Antioch and Pittsburg are new  
27 citizens. That area has seen major growth in the last couple of  
28



1 years, and a result of that, the majority of the people there do  
2 not know that this thing is going to go in, or is slated to go  
3 in.

4 What I'm asking tonight is, if Mr. Strock is  
5 confirmed, that he give us the opportunity to get an extension,  
6 a period of time in which we can make our people more aware of  
7 the fact that this is going in.

8 If you grant us that, then I think we have a viable  
9 opportunity to let people know what's occurring there. And most  
10 importantly, if they have any opposition, to state that  
11 opposition. If in effect there isn't any opposition, then I say  
12 that, you know, Dow should go ahead and do what they have to,  
13 because we don't care enough.

14 But at this point, I don't think under the direction  
15 of yourself or whoever the California EPA was directed under --  
16 and I don't only hold you responsible, or your organization,  
17 but the federal government -- I don't think we've been made  
18 aware. I don't think we've had enough opportunity. That's what  
19 I'm here for tonight.

20 That's all I have, and I appreciate your time.

21 CHAIRMAN ROBERTI: Thank you.

22 MR. STROCK: If I might, I just don't know enough  
23 about the facts of that case to respond off the cuff, to make in  
24 effect a legal suggestion to the Toxics Department.

25 I could commit to look into it quickly and get back  
26 to you, but again, I just don't have the fact at my hands enough  
27 that I could feel comfortable.







1 MR. OFFIELD: And we appreciate that.

2 I would just bring up one other point, that during  
3 this process, we did get a 30-day extension from your  
4 department, and we're very appreciative of that, because we did  
5 amass enough support to get that.

6 But what I would say to you is, that your people also  
7 intimated to the fact it was a done deal. And that even though  
8 we had the opportunity to respond, that it pretty much was going  
9 to go through.

10 And I think you can only imagine that that was a very  
11 detrimental thing to us.

12 I don't think that that's correct, and I would hope  
13 that you would agree with me.

14 MR. STROCK: Well, I would totally agree, and I would  
15 like to follow-up with you on that as well, because that  
16 presents a lot of other issues we're going to have to follow up  
17 on, because the process cannot be flawed in that way.

18 MR. OFFIELD: Right. I appreciate it, thank you.

19 CHAIRMAN ROBERTI: Finally we have witnesses from the  
20 Committee for a Safe Environment, Ralph Sattler and Cathy Ivers.

21 I take it you want to testify together, or is there  
22 just one of you?

23 MS. IVERS: Separately.

24 CHAIRMAN ROBERTI: That's fine, separately. I just  
25 had you here together, so I assumed you wanted to testify. No,  
26 come separately, fine.

27 Mr. Sattler.  
28



1 MR. SATTLER: Thank you this opportunity to speak  
2 before you today. My name is Ralph Sattler, and I'm a resident  
3 of Martinez, and I'm here today to voice my opposition to the  
4 confirmation of James Strock.

5 I am one of many members of our community who oppose  
6 the permitting of the hazardous waste incinerator which would  
7 operate within 500 feet of the Benecia Bridge and on the banks  
8 of the Carquinez Straits.

9 The head of Cal EPA must be a person who understands  
10 and is dedicated to the purpose and function of this department.  
11 That purpose is the protection of the health and safety of the  
12 citizens of California and our environment. All actions taken  
13 by Cal EPA must be based upon this doctrine.

14 In response to some of the things that you've already  
15 answered, I'm going to change part of what I had down here, but  
16 I would like to first comment about the Dow -- proposed Dow  
17 Chemical incinerator. According to a recent article in the  
18 Contra Costa Times, there has been an extension of approximately  
19 30 days for the public to comment. However, in the same  
20 article, it also stated that they, both the federal and  
21 California EPA, intend to issue the approval for the permit.

22 This is a totally biased statement. There is --  
23 there's no point in having public comment if you're not going to  
24 take the comments and read them, and to use that in the  
25 evaluation of your decision.

26 I have a great deal of concern from what I've seen on  
27 the document for the streamlining of the permitting -- of the  
28



1 permits. And that basically eliminates the public from the  
2 permitting process by a recommendation for the administratively  
3 issued permits by Cal EPA. This is a trend that seems to be in  
4 line with what's going on with the federal government, as a  
5 committee headed by our nation's champion speller recommended  
6 that industry no longer needs to inform the public when they  
7 exceed their pollution standards.

8 This does not give the protection to the public.  
9 This recommendation, by the way, was approved by President Bush,  
10 and they no longer are required in the regulations to tell us  
11 when they exceed their standards.

12 The draft EIR for Rhone-Poulenc identified there  
13 would be an increased cancer risk of one additional person if  
14 the incinerator permit is granted.

15 I believe the current risk of cancer in Contra Costa  
16 County is 466 per million. This risk of killing one more person  
17 is not acceptable. Is anyone willing to offer themselves or a  
18 member of their family so that industry can burn their toxic  
19 waste?

20 Yet the draft proposal of Cal EPA states that they --  
21 California should take and explore the state taking a more  
22 active role. And I emphasize the word "more" here. It implies  
23 that the role already exists on the part of the state in the  
24 siting of incineration projects.

25 Why is that? How does that comply with the purpose  
26 of the California Environmental Protection Agency?

27 That's all I have to say.  
28







1           CHAIRMAN ROBERTI: Thank you very much.

2           MR. STROCK: If I could just briefly, Mr. Chairman,  
3 just reiterate that the draft permit streamlining and reform  
4 proposal has been out for comment. We are extending the time  
5 for people to get involved in work groups, task forces, so that  
6 we can have something that the Legislature and people will want  
7 to try to do. It's a very open process.

8           I really ask people to please, if you'd be so kind,  
9 in addition to identifying areas that you think need to be  
10 improved, if you could send in suggestions to us as to how we  
11 can improve it, because I think most people agree, it needs to  
12 be better. But we need help as to how to do it.

13          MR. SATTLER: If I may, I'd like to make a couple  
14 other comments.

15          I'm concerned with the comments that I've heard about  
16 the accessibility of the groups of other than industry to your  
17 department, and the inability to get responses from your  
18 department.

19          I'm also concerned, being an opponent of the Rhone-  
20 Poulenc incinerator, with the potential action that the state  
21 may take, whether it be above or below board, and any attempt to  
22 change the city's role as the lead agency in that permitting  
23 process and thereby eliminate the public participation in that  
24 process.

25          I'd like to know what assurances that we're going to  
26 have from you, should you be confirmed, that this won't happen.

27          MR. STROCK: Well, two things.  
28



1 First of all, your first point was with respect to  
2 accessibility. I have -- I can't stress enough how hard I work  
3 to be accessible to people all the time in our whole office,  
4 whether it's letters, meetings. One can never do every single  
5 thing in a given day, but we try. And I really don't know how  
6 to respond to that, except I can't imagine how one could do  
7 more, really, on that. And we're going to keep doing that, too,  
8 and keep trying to do it better. But I think it's been good.

9  
10 With respect to the Rhone-Poulenc issue and the lead  
11 determination, I believe that lies with the Governor's Office of  
12 Planning and Research, and we'll work with them on it.

13 But again, anything on that, too, would be a very  
14 open public process.

15 MR. SATTLER: Some of things that have been  
16 mentioned today have been where there has been indications that  
17 the position taken by Cal EPA has not been in conjunction with  
18 the best interests of the public or the community. And that's  
19 one of the reasons for the questions and concern.

20 MR. STROCK: I hope we could earn your confidence.

21 MR. SATTLER: Thank you.

22 CHAIRMAN ROBERTI: Cathy Ivers, Communities for a  
23 Safe Environment. And she will be followed by Stormy Williams,  
24 South Kern Residents Against Pollution, and that will be our  
25 last witness.

26 MS. IVERS: Hi. My name is Cathy Ivers.

27 I'm not a scientist. I'm not an attorney. I'm not a  
28 doctor or government official or politician.



1 I'm a wife, a mother. I'm a student, and I'm  
2 spokesperson for Communities for a Safe Environment, and we  
3 represent a group of over 4,000 people in the Bay Area. We were  
4 formed primarily in opposition to the Rhone-Poulenc hazardous  
5 waste incinerator.

6 Articles in the newspaper and statements in the Cal  
7 EPA draft action plan indicates the state's considerable  
8 interest in the siting of commercial hazardous waste  
9 incinerators.

10 Rhone-Poulenc, a French-owned company, is attempting  
11 to obtain a permit to burn 142,000 tons of hazardous waste per  
12 year in a proposed commercial toxic incinerator. The location  
13 is approximately 500 feet from the Benecia-Martinez Bridge, a  
14 major artery in the Bay Area. There is overwhelming public  
15 opposition to the incinerator.

16 The draft EIR states that there will be an increase  
17 in cancer risk, and in case of a major catastrophe, there is no  
18 way to evacuate the area. It's in the middle of a half a  
19 million people radius, 500,000 people.

20 And the waste is not all generated in Martinez. It's  
21 going to have to get there. Martinez will become the hub in the  
22 Bay Area. This material will be -- they gave us no radius from  
23 which the waste would not come. It could conceivably come from  
24 out of this country, and considering that Rhone-Poulenc is, you  
25 know, a French-owned company, that is not too far fetched.

26 Rhone-Poulenc has recently attempted to have the  
27 state replace the City of Martinez as the lead agency in the  
28







1 permitting process. The state has responded that they do not  
2 have the authority to remove Martinez as the lead agency, and  
3 that was the right thing to do. But they are willing to mediate  
4 the differences between the City and Rhone-Poulenc. Should this  
5 become the case, I'd like to ask Mr. Strock to answer the  
6 following questions.

7           What would be the role of Cal EPA? Would Cal EPA  
8 attempt to force or pressure the City into accepting a bias in  
9 favor of incineration, circumventing public participation?

10           And I have two more questions after that.

11           MR. STROCK: May I respond?

12           Just to restate again succinctly, we do not have a  
13 bias toward incineration. I cannot stress that enough, and I  
14 would stand on my earlier answer on that, but I would just  
15 stress that repeatedly if need be.

16           MS. IVERS: Thank you for repeating that.

17           Since Cal EPA seems to have a biased attitude in  
18 favor of permitting incinerators, and an interest in  
19 streamlining the permit process, would Cal EPA attempt to  
20 influence the changing of a lead agency to a more preferred lead  
21 agency with the broadest regulatory authority for the project?

22           In other words, would you take it away from local  
23 control and give it to another agency that might have less  
24 vested interest in the local issue?

25           MR. STROCK: No, we would have -- no.

26           MS. IVERS: Will you categorically -- then, will you  
27 state categorically that neither you or your department will  
28



1 make any attempt to recommend or influence the Office of  
2 Planning and Research, or any other agency that might be  
3 approached by Rhone-Poulenc for approval of their proposal?  
4

5 MR. STROCK: No, I think the issue had to do with --  
6 the approach was concerning, I believe, the City and its status  
7 changing with respect to the EIR process, and would we help  
8 mediate that.

9 And I wouldn't think that would necessarily be a bad  
10 thing to do. That doesn't assume any kind of bias at all.

11 If there were bias, it would be a bad thing, but  
12 there's not.

13 MS. IVERS: Okay, we're just very, very concerned  
14 that Rhone-Poulenc may attempt an end run around the Tanner  
15 process and the CEQA process, and the way that they're already  
16 moving along. And we would just like assurances from your  
17 department that public participation will not be cut,  
18 eliminated, or discouraged from the siting of commercial  
19 hazardous waste incinerators in California, now or in the  
20 future.

21 MR. STROCK: No, we will definitely follow, as in all  
22 cases, strictly follow the law and the spirit of it.

23 And I would stress, please bear in mind that if the  
24 Tanner process is kicked in in a situation, the Governor has  
25 delegated me as the point of appeal, so that I do not get  
26 involved in the beginning of these, so that I won't have the  
27 knowledge. And that's something, though, that all sides should  
28 want to have. I cannot prejudge.



1 But you do know, and I'd want to stress again, there  
2 is no bias toward incineration whatsoever. Indeed, it is the  
3 least preferred remedy, as I stated earlier.

4 MS. IVERS: Has the state been talking with Rohne-  
5 Poulenc about proposed issuance of permits as administrative  
6 permits?

7 CHAIRMAN ROBERTI: Normally, we have been pretty lax,  
8 but we normally ask questions through the Chair.

9 MS. IVERS: You don't want the -- I'm sorry. I don't  
10 know the procedure.

11 CHAIRMAN ROBERTI: That's all right. I've been  
12 allowing it to happen.

13 MS. IVERS: Actually, this was my last question.

14 [Laughter.]

15 MS. IVERS: Should I go back to civic class?

16 CHAIRMAN ROBERTI: You can have your last question.

17 MS. IVERS: Thanks.

18 Has the state been talking with Rhone-Poulenc about  
19 the proposed issuance of permits as administrative permits by  
20 the state? In other words, would you just issue them  
21 administratively, or would you always include the public?

22 MR. STROCK: No, no.

23 I think there's two things being confused here, if I  
24 might, but I understand how it could come up.

25 There is discussion in the permitting -- permitting  
26 reform draft that would look at increasing the areas for  
27 administrative permit, kind of across the board in different  
28







1 places. It often happens now. But that would be -- have  
2 nothing -- number one, it would be purely prospective, any  
3 change, and would have to be passed by the Legislature. And  
4 that's the ultimate in public comment.

5 And number two, this process is one everyone agrees  
6 has to have extensive public comment. I can't imagine any case,  
7 but even -- no matter what happens in the future, the law is  
8 very clear, there will be extensive public comment.

9 MS. IVERS: Okay, thank you very much for your time.

10 CHAIRMAN ROBERTI: Our last witness is Stormy  
11 Williams, Southern Kern Residents Against Pollution.

12 MS. WILLIAMS: Well, I guess it's sort of an omen  
13 I'm last. I've come a long way today. I was here last week  
14 also.

15 I'm here representing Southern Kern Residents Against  
16 Pollution, and also a group of fed-up desert environmentalists  
17 called the Desert Rebellion.

18 I'm here from Rosamond, the site of California's  
19 worst childhood cancer cluster. We have lost seven out of nine  
20 afflicted children.

21 We're in the area in the desert where it's -- we have  
22 California's only pay to burn toxic incinerator on top of our 24  
23 toxic sites in Rosamond and South Mojave. These toxic sites  
24 never started out to be permitted toxic businesses. They were  
25 regular businesses that, through no regulation by Kern County  
26 and the state, became, you know, run amok businesses and toxic  
27 sites. We have all the way from smelters to people open burning  
28



1 freight cars, and people open burning wire, things like that.

2 All of the studies done on our deceased children  
3 center around toxics. Over half of our children that are dead  
4 died of a rare brain stem cancer. You would not expect to find  
5 one of these cancer cases in a town our size.

6 It is a very slow process, getting our 24 sites  
7 cleaned up. Part of it is due to a lack of money; part of it is  
8 due to a lack of coordination and motivation.

9 We were quite pleased to hear the Cal EPA was being  
10 formed, because we were quite disgusted with the ex-agency, the  
11 DHS, who was one of the instigators of the toxic burning at  
12 National Cement ten years ago. So, we thought, oh boy, you  
13 know, this is just going to be great.

14 Well, it is not happening for us. Mr. Strock is like  
15 the rabbit in the Energizer Battery ads on t.v., and he's  
16 marching down the road, and instead of the drum going,  
17 "Bang-bang, bang-bang," it's going, "big business, big  
18 business."

19 And we are products of lack of regulation in the  
20 desert. We're the farthest community from our county seat,  
21 Bakersfield. The regulators do not come, and that is why we  
22 have 24 toxic sites in a little tiny place.

23 I do not know whether Mr. Strock's policies are his  
24 idea, or Plutonium Pete Wilson's idea. We are still concerned  
25 about our EIR on National Cement, and we have been waiting since  
26 '90, when we first started asking for that.

27 Also, we did not know that National Cement was  
28





1 burning toxic waste for eight years. They burned eight years,  
2 and nobody knew it until people started to get sick.

3 Now, I passed out these packets. And if you wouldn't  
4 mind looking through to the page with the red markings on them,  
5 and we're very concerned. This was a federally leaked document  
6 to us. Mr. Angel has mentioned this document. And you will see  
7 that the state is striving very hard to keep this incinerator  
8 open. And we feel that this is a terrible situation and  
9 advocacy for business.

10 Also, the next page after that is a little bit about  
11 Mr. Rauh. And I do understand that Mr. Strock had agreed to the  
12 appointment of Mr. Rauh as Acting Director over Permitting and  
13 Enforcement. And the following from Mr. Rauh talks about his  
14 attitudes in trying to keep this incinerator going, and this was  
15 mentioned before. There is four pages highlighted of Mr. Rauh.

16 And we do not think that Mr. Rauh should be in this  
17 job, and we think appointing him to anything very important  
18 would be a sad mistake.

19 Also, we are very concerned about these fees that the  
20 state gets. They get three percent of the annual gross fees  
21 from toxic burning at National, and Kern County gets up to ten  
22 percent. And that's another reason that we, you know, feel that  
23 it's being kept open.

24 It looks to us like the EPA is now BAD, because it is  
25 the Business Advocacy Department. We do not want one-stop  
26 shopping for toxic and hazardous waste permits. Right now,  
27 thank God, we have our water quality board monitoring two water  
28





1 problems at National Cement because their 27 acres of kiln ash  
2 has been declared hazardous waste, and the Cal EPA hasn't  
3 decided if it's hazardous waste yet.

4 Also, we want the protection of the health of people  
5 and animals first, and the environment first, and let the  
6 departments big business, such as the Commerce Department and  
7 the Chambers of Commerce.

8 Mr. Strock wants to streamline the permitting  
9 process, and we are very worried that this would eliminate much  
10 public input by having fewer public hearings and public comment  
11 periods.

12 In the desert and in this state, we need more  
13 regulation and more public participation, not less. Right now,  
14 in the Mojave Desert area of California, there's six major  
15 environmental problems: National Cement; two toxic trash train  
16 proposals; two toxic repository proposals; and the infamous Ward  
17 Valley Nuclear Dump, putting nuclear waste in unlined ditches.

18 If Mr. Strock is confirmed, he would be in charge of  
19 five or six of these desert environmental disasters.

20 By the way, aren't we totally blessed to have people  
21 that work in the Cal EPA and the federal EPA that are willing to  
22 put their jobs on the line by leaking these documents to  
23 environmentalists? Some days, that's the only bright light that  
24 I see.

25 Down where I live in the small town, we consider this  
26 goings on with Mr. Rauh and all of these problems I've  
27 mentioned, we consider this just down-right skullduggery. And  
28



1 where I live in Rosamond, on the street that I live in, which is  
2 rural, of the nine original residents on that street, seven are  
3 afflicted with cancer.

4 When it happens to you, and it happens to your family  
5 and your next-door neighbor at age ten, you look at these things  
6 a lot differently. You don't look at this business advocacy as  
7 a real hot idea.

8 We'd also like to bring up the problem of siting  
9 toxic projects on minority people. We are pledged to help the  
10 people in Kettleman City. They already have the only one --  
11 Class I toxic dump in the state, and now they want to inflict  
12 the toxic incinerator on these people.

13 We're running up and down Highway 5 like, you know,  
14 gas is free, trying to help these people. We've been to the  
15 East L.A., helping them. We've been to Alpa; we'll probably end  
16 up in Martinez, trying to back those folks, too.

17 The people in Kettleman are fighting for their lives.  
18 There is a state and federal mandate to reduce the production of  
19 toxic waste, and instead of spending money at the far end of  
20 this, we want DHS and the Cal EPA to spend money on the  
21 reduction of these chemicals.

22 Also, on the objectives of the Cal EPA in writing,  
23 the top one is, quote:

24 "Our most urgent attention must be  
25 turned towards those activities,  
26 processes and substances presenting  
27 the greatest risk to public health  
28



1                   and the environment."

2                   We want Mr. Strock derailed, and we don't want  
3 Mr. Rauh in his position, either. No more big advocacy for  
4 business. We want environmental advocacy.

5                   And if you would bear with me, if you would look ten  
6 pages in from the back of your packet, there's a letter from a  
7 young lady that lives by National Cement. And I cannot read  
8 this letter in public, I'm sorry, but if you would read it to  
9 yourselves, this little girl is asking for help. And she wants  
10 you to know she's eight-and-three-quarters, not just eight.

11                  Thank you.

12                  CHAIRMAN ROBERTI: Thank you, Ms. Williams.

13                  Yes, this is a letter from a young girl:

14                         "My name is Sarah Jane Widmer.

15                         I was born in this valley 8-3/4  
16                         years ago.

17                         "I now have nose bleeds and a  
18                         sore throat and my eyes are hurting.

19                         I want to breathe.

20                         "Please help.

21                         "Sara Jane"

22                  MS. WILLIAMS: And the state toxicologist who's made  
23 three or four trips down there has never interviewed one person  
24 that filled out any medical problems on these reports. They  
25 don't want to know, because they want this place going.

26                  And I find this letter -- I've even had this blown up  
27 on posters, it gets me so upset that I just -- you have to be  
28





1 there to see what goes on in the desert.

2 We need more regulation, not less regulation. We  
3 need more, and we need the Cal EPA to insist that these counties  
4 and these air district, and all these people, get with it,  
5 because they are certainly not down our way.

6 And this is a beautiful child, a beautiful little  
7 girl.

8 CHAIRMAN ROBERTI: Thank you very much, Ms. Williams.

9 MR. STROCK: Well, I would just want to stress again  
10 how important -- I'm personally taking time and emphasis on this  
11 set of facilities. And I hope that we'll be able to reverse, I  
12 think, the very legitimate concerns about bias in the earlier  
13 process several years ago, and better get people's confidence.

14 CHAIRMAN ROBERTI: One of the considerations, and I  
15 think Ms. Williams was the last to articulate it, through the  
16 hearing is that economic considerations are driving the  
17 decisions of the Agency.

18 What concerns me a little bit is, I have a bill in  
19 which the Agency suggested that we consider economic  
20 considerations as well as a reason for delay. That was a bill  
21 that passed in 1986, SB 1500, surrounding the disposal of toxic  
22 wastes within California. So, I understand the agencies wanted  
23 to amend that.

24 I understand, I'm not being so parochial as to talk  
25 about my bill, but what concerns me is that -- let the  
26 Legislature make the decision as to what should be weighed as  
27 between economic, and environmental, and health considerations.  
28



1           But when an environmental agency is set up, your  
2 charge is the environment and the public health. And the  
3 balancing act, quite frankly, should be done by the Legislature.  
4 And if we decide to change the charge to you, then obviously,  
5 that is something that you should be concerned about.

6           But I get a little bit concerned when the Agency  
7 itself wants to factor in economic considerations, and I've had  
8 that experience myself with the EPA in legislation which is  
9 pending presently.

10           So, I'd like you to address that.

11           MR. STROCK: If I might, here's a dilemma that we  
12 face a good bit, particularly in this difficult economic  
13 situation.

14           The state's commitment in terms of resources to  
15 environmental protection is quite great. Not in the budget,  
16 where it's miniscule, but in terms of what people have to pay to  
17 get things done and accomplished. So, people are expecting,  
18 like in other areas, to see value for their money.

19           And when we get into areas -- and I'll talk about  
20 permitting for a minute. That came up, and it's a clearer case  
21 of this -- obviously, our -- our whole reason for being is  
22 environmental protection. With that in mind, it's very  
23 important for us to try to have input when people are discussing  
24 environmental issues.

25           So, for example, when environmental permitting reform  
26 comes up, I have worked hard to seize the opportunity the  
27 Governor's given us to be a part of that because other people  
28



1 that might take the lead, say, a business agency, wouldn't have  
2 the same commitment to the environmental protections. That  
3 leads to some tough calls, and the best way that I know to try  
4 to deal with that and to be of use in the process is to be  
5 up-front about what we're trying to do, what the considerations  
6 are.

7 But there's no question that our bottom line is  
8 always environmental protection, period.

9 CHAIRMAN ROBERTI: Much of state government often,  
10 and I'm sure your experience, probably, in administrative  
11 agencies is more detailed than mine, is to win the ear of the  
12 Governor, or to win the ear of whoever the decision maker is  
13 going to be, and we look to you to be the advocate for the  
14 environment, for the public health.

15 Obviously, within an area of reason, we look to the  
16 Secretary of Business and Transportation, or the Director of the  
17 Department of Commerce to advocate for businesses, as they  
18 should.

19 It's sort of an adversarial system, and we don't --  
20 and I'm not saying this about you, because I don't feel it's the  
21 case. But we don't want, you know the white flag of surrender  
22 up before the debate's been joined.

23 MR. STROCK: Sir, I would say, you know, I hope you  
24 will hear, I've tried to be an extremely strong advocate, and I  
25 think in fact I often get the opposite criticism, for being too  
26 unreasonable, which I guess I should reveal here. I think  
27 that's to be expected.  
28







1  
2 CHAIRMAN ROBERTI: We expect in these times of  
3 massive danger to the public health, you know, from pollution,  
4 for the Secretary to be unreasonable. Let other people be  
5 unreasonable in other directions. Obviously, you have to work  
6 within a framework of what is rational, and what is acceptable,  
7 and what will state your case the best.

8 About my own legislation, I'll talk to you about that  
9 after we vote.

10 [Laughter.]

11 CHAIRMAN ROBERTI: There are some very particular hot  
12 spots, though, that I didn't realize how bad it was, all of the  
13 hot spots that have been designated. But it really looks like  
14 some areas are just dumping grounds for the State of California.  
15 Whoever seems to have the least amount of power, they seem to  
16 get all the dump places.

17 We cannot ignore, and I'm saying you have, but simply  
18 this Committee cannot ignore these cancer clusters, which are  
19 just shocking things, where ever they occur.

20 So, I intend to vote for your confirmation based on  
21 your testimony, based on the people who have written in support  
22 of you, as well as testified in support of you, and based on  
23 your record.

24 But I share some of the concerns of the people who've  
25 come here, that EPA has not been functioning. It seems to be an  
26 agency -- seems to have been an agency of business, so much so  
27 there've been discussions about just abolishing it, because who  
28 needs something under the title of environmental protection



1 being business advocacy. And when California is just struck so  
2 terribly with a public health problem, especially in the desert  
3 and Central Valley, we've had stories, after stories, after  
4 stories of cancer clusters, and it never seems that anything  
5 gets done about it.

6 But you seem to have the background and the support,  
7 and we're putting our trust in you, because this is a very  
8 important vote. The public health is what the people expect us  
9 to guard. You said it. You said it very, very well, and if we  
10 can't do that, we can't do anything.

11 Senator Petris.

12 SENATOR PETRIS: In addition to Mr. Wells, how many  
13 people from his former shop are now in your shop?

14 MR. STROCK: Sir, the reorganization simply brought  
15 the existing places in. So, the employees below that, with the  
16 exception, I believe, of a deputy slot that is open, are the  
17 same people as before.

18 What's different is the decision making process, and  
19 what they're being directed to do.

20 SENATOR PETRIS: How do you approach this? Do you  
21 have meetings with your top three or four, five people, and lay  
22 down what your policy is, and insist that they carry it out?

23 MR. STROCK: We have a series of regular meetings,  
24 Senator Petris, at several levels with the heads of the various  
25 boards and departments, also with the lead -- they're usually  
26 called executive officers on the boards and departments as well.  
27 We work with them on areas that cross-cut, like legislation,  
28



1 regulation, permitting, and try to send very strong management  
2 signals through particular choice -- on a particular matter, if  
3 it's particular important, or sets a precedent.

4           SENATOR PETRIS: How about in the Pesticide Control  
5 part? Is that whole body moved over intact into EPA?

6           MR. STROCK: Yes. That's how the law works that we  
7 worked under.

8           And I do not have, in any of the areas, authority to  
9 affect personnel decisions directly, except as one part of a  
10 much bigger process.

11          SENATOR PETRIS: You have to work with those that  
12 came over; is that it?

13          MR. STROCK: Yes, but let me say, Senator Petris, I  
14 think -- what we've done, I think it's important to recognize,  
15 the key areas that I think make a real difference on pesticide  
16 decisions, like the risk assessment areas, we have an additional  
17 office that does science. One of the key things that we've --  
18 separate from them -- one of the key things we've done, and it's  
19 often been, frankly, getting very different cultural backgrounds  
20 in the sense of an agriculture culture versus a public health  
21 consciousness together. We've -- part of my job is to bring  
22 those people together and get a better decision making process  
23 out of it.

24          And I think you will hear from people on all sides  
25 that that's been a top priority.

26          SENATOR PETRIS: Well, let me just explain where I'm  
27 coming from.  
28







1           When the Governor, when I commended him earlier in  
2 the day, when he announced he was going to create this new  
3 Agency, and pull it out of the bag, I was very happy. As I  
4 indicated, I had bills to do that, and I had parts of bills, had  
5 that as part of other bills, and never succeeded with the  
6 Governor. So, I was happy to see this change.

7           But then, the next question was, who's going to be  
8 manning the shop? If they take all the Pesticide Control people  
9 out of Department of Ag., and drop them somewhere else,  
10 nothing's going to change, because they've had generations of  
11 policy.

12           At one point it was so bad that the Legislative  
13 Analyst, in the official analysis of the budget, called the  
14 Department the "handmaiden" of the industry it's supposed to  
15 regulate. And the Analyst doesn't go around making statements  
16 like that very easily. It was in their -- it was printed in  
17 their analysis.

18           So, my next worry was, well, is the new boss going to  
19 turn them around, or are their habits from way back, and their  
20 alliance and loyalty to the chemical industry out there?

21           I wasn't concerned so much about their closeness to  
22 the farmer. The problem there, as I saw it, was that the  
23 farmers have made a very bad mistake and permitted themselves to  
24 be used as shields by the chemical companies. And I've  
25 repeatedly told the farmers, "I don't have a fight with you.  
26 They're peddling these poisons; you're not chemists. Just get  
27 out of my way and let me handle the situation directly."  
28



1 But everytime we have a bill to regulate the  
2 pesticide problem, the growers come in and oppose it. I  
3 finally talked to the women. I said, "You have children. The  
4 farmers' wives have children. Your children are vulnerable as  
5 well as the farmworkers' children. They're all in the same  
6 area. Why don't you ask your husbands to get out of my way? I  
7 don't have a quarrel with them, and let me tackle the chemical  
8 companies?"

9 What followed was a tremendous campaign by some  
10 people within the department, run up and down the Valley,  
11 stirring up the troops against the spill, which was in their  
12 interest, in the interest of the troops that were being stirred  
13 up.

14 So, to make it shorter, I'm nervous about the same  
15 people, with the same mind-set, and a long history, and a  
16 terrible track record, doing the same job that they were doing  
17 before, the only difference is, there's a new boss.

18 So, the question is: what's the boss going to do?

19 I hope the boss can reach out to Ukiah, where  
20 apparently there's nobody been paying any attention to that  
21 terrible problem up there, and the desert, and all these other  
22 places, and really go to work on it. I think that's what your  
23 intention is.

24 I don't think you've been there long enough to move  
25 people. That's not easy. But I would hope to see some pretty  
26 good progress this coming year in that direction.

27 Otherwise, it's just a lost cause.  
28



1           MR. STROCK: I would definitely hope, Senator Petris,  
2 to meet the challenges you've laid out.

3           I would say, and I hope you would find, that when you  
4 talk to people who have to deal with what is now the Department  
5 of Pesticide Regulation, that people do sense a very big  
6 difference. And it's a difference of how everything has to be  
7 approached.

8           The fact is, our purpose is environmental protection.  
9 That leads you in a very different way to approach things up  
10 front, then if you're part of a department whose job is to  
11 advocate a particular industry.

12          And frankly, I think that put everybody in an  
13 impossible situation, the previous situation. Whether it's the  
14 ag. commissioners who are now being dealt with and expected to  
15 deal much more seriously as a uniform type of enforcement team,  
16 or whether it's the scientists who have to deal very directly  
17 and come to terms with people in the new Environmental Health  
18 Hazard office, or whether it's the leadership in the department,  
19 I think and I certainly hope that you will notice a very  
20 distinct difference.

21          And I must tell you, I think a lot of people outside  
22 the department do sense that difference. Some like it; some  
23 don't. But I think they realize that the expectations are very  
24 different, and we hope to, again, have a program you can be  
25 pleased with.

26          SENATOR PETRIS: Thank you.

27          CHAIRMAN ROBERTI: Any further questions?  
28







1 Do I hear a motion?

2 SENATOR BEVERLY: Move the Committee recommend  
3 confirmation.

4 CHAIRMAN ROBERTI: Senator Beverly moves the  
5 confirmation of James Strock be recommended to the Floor.

6 Secretary will call the roll.

7 SECRETARY WEBB: Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Beverly Aye.

10 Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Mello Aye.

13 Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye.

16 Senator Craven. Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 SECRETARY WEBB: Roberti Aye.

19 CHAIRMAN ROBERTI: The vote is four to zero;  
20 confirmation is recommended to the Floor.

21 Congratulations.

22 MR. STROCK: Thank you very much. I greatly  
23 appreciate it, and I hope to merit your confidence.

24 CHAIRMAN ROBERTI: Very good, thank you.

25 [Thereupon this portion of the  
26 Senate Rules Committee hearing  
27 was terminated at approximately  
28 7:30 P.M.]



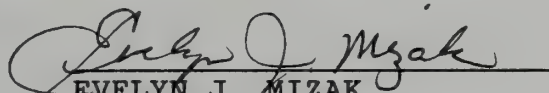
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of June, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter



STATEMENT OF LYNNE EDGERTON  
SUPPORTING THE CONFIRMATION OF  
JAMES M. STROCK  
AS  
SECRETARY OF ENVIRONMENTAL PROTECTION  
FOR THE  
STATE OF CALIFORNIA  
BEFORE THE  
CALIFORNIA SENATE RULES COMMITTEE  
JUNE 17, 1992  
SACRAMENTO, CALIFORNIA





STATEMENT OF LYNNE EDGERTON SUPPORTING THE CONFIRMATION OF JAMES M. STROCK AS SECRETARY OF ENVIRONMENTAL PROTECTION FOR THE STATE OF CALIFORNIA BEFORE THE SENATE RULES COMMITTEE JUNE 17, 1992

GOOD AFTERNOON, MY NAME IS LYNNE EDGERTON. I AM AN ENVIRONMENTAL AUTHOR AND ATTORNEY. I SERVE ON THE BOARD OF THE CLIMATE INSTITUTE, GREEN SEAL, THE CHILDREN'S EARTH FUND, AND LIGHTHAWK. FOR APPROXIMATELY NINE YEARS I SERVED AS A SENIOR ATTORNEY AND CONSULTANT WITH THE LOS ANGELES AND NEW YORK OFFICES OF THE NATURAL RESOURCES DEFENSE COUNCIL. MY BOOK, THE RISING TIDE: GLOBAL WARMING AND WORLD SEA LEVELS, WAS PUBLISHED LAST YEAR.\*

MR. CHAIRMAN, I THANK YOU AND YOUR COMMITTEE FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF SENATE CONFIRMATION OF JAMES M. STROCK AS CALIFORNIA'S FIRST SECRETARY OF ENVIRONMENTAL PROTECTION. MR. STROCK'S EDUCATION AND PRIOR EXPERIENCE MAKE HIM HIGHLY QUALIFIED TO SERVE AS CALIFORNIA'S CHIEF ENVIRONMENTAL PROTECTION OFFICER. INDEED, MANY PEOPLE FAMILIAR WITH HIS RECORD AS HEAD OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT UNIT CREDIT HIM WITH BEING THE MOST EFFECTIVE ENFORCEMENT CHIEF IN THE U.S.E.P.A.'S

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\*Additional organizational affiliations (for information purposes only) include: Chairperson, Children Light the Way, Advisory Board, Project Eco-School; Advisory Board, Environmental Communications Office; Advisory Board, Eco-Expo, Inc.; Advisory Board, Collette Chuda Fund for the Environment; Advisory Board, the Tinker Institute on International Law and Organizations; Steering Committee, Sierra Club Task Force on Environmental Innovation; Advisor, Journal of Environment and Development: A Review of International Policy (U.C.S.D., La Jolla, Ca.)



## HISTORY.

OF EQUAL IMPORTANCE TO CALIFORNIANS, HOWEVER, IS MR. STROCK'S COMMITMENT TO MAINTAINING HIGH ENVIRONMENTAL STANDARDS, WHILE AT THE SAME TIME PROMOTING ECONOMIC GROWTH. WHAT CALIFORNIA FAMILIES MOST WANT IS AN ENVIRONMENT SECRETARY WHO WILL WORK FOR BOTH A CLEAN ENVIRONMENT AND A SOUND ECONOMY, FOR PRESENT AND FUTURE GENERATIONS.

I HAVE JUST RETURNED FROM RIO DE JANEIRO, BRAZIL, WHERE THE HEADS OF STATE OF 178 NATIONS MET AT THE HISTORIC "EARTH SUMMIT" UNDER THE AUSPICES OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT. THESE NATIONS COMMITTED THEMSELVES, IN A VARIETY OF WAYS, TO WORKING TOGETHER TO ACHIEVE, FOR THE GLOBE, SUBSTANTIALLY THE SAME GOAL AS SECRETARY DESIGNATE STROCK HAS ESTABLISHED FOR OUR STATE -- THE GOAL OF SUSTAINABLE DEVELOPMENT. FOR MANY AT RIO, AND FOR GOVERNOR WILSON, THIS CONCEPT HOLDS THAT NOT ONLY IS ECONOMIC GROWTH COMPATIBLE WITH SUSTAINABLE DEVELOPMENT -- AS LONG AS IT IS THE RIGHT KIND OF ECONOMIC GROWTH -- IT IS IN FACT GREATLY NEEDED TO RELIEVE POVERTY AND GENERATE THE RESOURCES FOR INVESTMENT IN ENVIRONMENTAL IMPROVEMENT INFRASTRUCTURE, IN GREEN TECHNOLOGY, IN ENVIRONMENTAL QUALITY MANAGEMENT, AND HENCE, TO PREVENT FURTHER ENVIRONMENTAL DEGRADATION. (MACNEIL, 1989.)

ONE THEME SOUNDED LOUDLY IN RIO: THAT ACTIONS PROMOTING SUSTAINABLE LIVELIHOODS AND ENVIRONMENTAL PROTECTION ARE ESPECIALLY ESSENTIAL





AT THE STATE AND COMMUNITY LEVEL. AS I WENT DOWN THE CHECKLIST OF ACTIONS NEEDED TO ASSURE THAT CALIFORNIA IS ON THE ROAD TO SUSTAINABILITY, I REPEATEDLY THOUGHT OF INITIATIVES WHICH MR. STROCK HAS BEGUN AND GOALS WHICH HE HAS ARTICULATED FOR CAL/EPA. I REALIZED THAT MR. STROCK'S LEADERSHIP IN FACT OFFERS A RICH OPPORTUNITY FOR OUR STATE TO IMPROVE THE ENVIRONMENT AND ALSO TO SEIZE LEADERSHIP AND INSPIRE OUR INDUSTRY TO COMPETE WITH JAPAN AND EUROPE FOR AN EMERGING MARKET FOR CLEAN TECHNOLOGIES. I REFER YOU MR. CHAIRMAN, IN CASE IT'S OF INTEREST TO YOU, TO THE FIVE AGREEMENTS WHICH GLOBAL LEADERS SIGNED IN RIO: THE RIO DECLARATION, AGENDA 21, THE FRAMEWORK CONVENTION ON CLIMATE CHANGE, THE CONVENTION ON BIODIVERSITY, AND THE FOREST PRINCIPLES. I'LL MAKE THEM AVAILABLE TO YOU AFTER THE HEARING IF YOU WISH.

WHAT IS IMPORTANT TO THIS COMMITTEE, AND TO CALIFORNIANS, IS THAT MR. STROCK, AS SECRETARY DESIGNATE AND AS HEAD OF THE NEWLY CREATED CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, HAS ALREADY TAKEN MANY STEPS TOWARD SECURING BOTH A HEALTHIER ENVIRONMENT AND A STRONGER, MORE EFFICIENT ECONOMY FOR PRESENT AND FUTURE GENERATIONS. I WILL BRIEFLY DISCUSS FOUR OF THE MOST IMPORTANT STEPS.

FIRST, MR. STROCK SUCCESSFULLY CREATED CAL/EPA, THUS BRINGING THE CORE AGENCIES RESPONSIBLE FOR AIR, WATER, WASTE, TOXIC SUBSTANCES, AND PESTICIDES UNDER ONE ROOF, WITH ENVIRONMENTAL HEALTH SPECIALISTS. THIS REORGANIZATION RECOGNIZES THE INTERRELATED NATURE OF ENVIRONMENTAL PROBLEMS -- AND THE NEED FOR CALIFORNIA TO





DEVELOP INCENTIVES TO REDUCE POLLUTION AND WASTES OVERALL. AN INTEGRATED APPROACH PRODUCES THREE RESULTS. FIRST, NEW PROBLEMS CAUSED BY POLLUTANT BEHAVIOR IN THE ENVIRONMENT ARE MORE LIKELY TO BE IDENTIFIED. SECOND, OLD PROBLEMS ARE MORE LIKELY TO BE ACCURATELY ASSESSED AND CLEANED UP. THIRD, RECOGNITION OF THE DAMAGE THAT TRANSFERS OF POLLUTANTS AMONG MEDIA CAN CAUSE PROVIDES A STRONG INCENTIVE TO PREVENT POLLUTION IN THE FIRST PLACE. (HAIGH AND IRWIN, 1990.)

THE VERY CREATION OF A CENTRAL INSTITUTION CAPABLE OF COORDINATING INTEGRATED POLLUTION CONTROL REPRESENTS A MAJOR STEP TOWARD SOLVING CALIFORNIA'S SERIOUS MULTI-MEDIA AND CROSS-MEDIA POLLUTION PROBLEMS. ONLY BY LOOKING AT THE ENVIRONMENT AS WHOLE AND CONTROLLING POLLUTION SO AS TO ALLOW MINIMUM NEGATIVE EFFECTS ON PUBLIC HEALTH AND OTHER ENVIRONMENTAL VALUES CAN WE TRULY PROTECT IT.

SECOND, MR. STROCK HAS STRONGLY AND EFFECTIVELY REPRESENTED BOTH CALIFORNIA'S INTEREST IN A CLEAN ENVIRONMENT AND IN ITS FISCAL WELL-BEING, BY ADVOCATING THAT THE CLEANUP AND REDEVELOPMENT OF THE 18 CONTAMINATED MILITARY BASES IN OUR STATE BE COMPLETED QUICKLY AND AT FEDERAL EXPENSE. IN SO DOING, MR. STROCK HAS DEMONSTRATED THAT HE IS WILLING TO FIGHT FOR BOTH CALIFORNIA'S ENVIRONMENT AND FOR OUR POCKETBOOK. FURTHERMORE, BY VIRTUE OF HIS CONSIDERABLE EXPERIENCE WITH THE FEDERAL GOVERNMENT, HE KNOWS HOW, WHEN, AND WHERE TO FIGHT FOR THE RIGHTS OF CALIFORNIANS VIS-A-VIS OUR



NATIONAL GOVERNMENT.

THIRD, MR. STROCK'S COMMITMENT TO VIGOROUS AND EFFECTIVE ENFORCEMENT OF STATE AND FEDERAL ENVIRONMENTAL LAWS WILL BE OF ENORMOUS LONG-TERM VALUE TO CALIFORNIANS. VIGOROUS ENFORCEMENT AND COMPLIANCE WITH ENVIRONMENTAL LAWS IS ESSENTIAL TO PROTECTION OF PUBLIC HEALTH, TO THE PROTECTION OF OTHER IMPORTANT ENVIRONMENTAL VALUES, AND TO THE CONTINUED GROWTH OF CALIFORNIA'S FAST-EXPANDING GREEN BUSINESSES. IT PROVIDES THE CATALYST FOR PRIVATE BUSINESS TO INVEST IN FINDING INNOVATIVE SOLUTIONS TO ENVIRONMENTAL PROBLEMS, AND IN MARKETING THE SOLUTIONS, BOTH AT HOME AND ABROAD.

FOR MORE DETAILS ABOUT MR. STROCK'S IMPRESSIVE RECORD AS CHIEF OF ENFORCEMENT AT U.S.E.P.A., I REFER YOU TO THE LETTER SUBMITTED TO CHAIRMAN ROBERTI TODAY BY FEDERAL EXPRESS FROM BILL FUTRELL, PRESIDENT OF THE ENVIRONMENTAL LAW INSTITUTE, AND A FORMER PRESIDENT OF THE SIERRA CLUB.

FOURTH AND FINALLY, MR. STROCK FULLY UNDERSTANDS TWO KEY ECONOMIC TRUTHS: 1) THAT ENVIRONMENTAL IMPROVEMENT AND TECHNOLOGY HOLD ENORMOUS ECONOMIC GROWTH POTENTIAL FOR CALIFORNIA BUSINESS, AND 2) THAT GOVERNMENT ACTION MUST CREATE, NURTURE AND SUSTAIN THE MARKET FOR ENVIRONMENTAL PROTECTION AND GREEN TECHNOLOGY. MR. CHAIRMAN, I UNDERSTAND THAT TWO OUTSTANDING CALIFORNIANS ARE SPEAKING TODAY IN SUPPORT OF MR. STROCK'S CONFIRMATION AND ABOUT THE DIRECT RELATIONSHIP BETWEEN HIGH ENVIRONMENTAL STANDARDS, VIGOROUS





ENFORCEMENT, AND A STRONG, LONG-TERM COMPETITIVE POSITION FOR CALIFORNIA'S BUSINESSES. I REFER YOU TO THE TESTIMONY OF MR. JOHN J. EARHART, OF LAGUNA BEACH, WHO IS CHAIRMAN OF THE GLOBAL ENVIRONMENT FUND, AND TO THE TESTIMONY OF MR. GRANT FERRIER, OF SAN DIEGO, WHO IS EDITOR-IN-CHIEF OF THE ENVIRONMENTAL BUSINESS JOURNAL.

IN CLOSING, I WISH TO EXPRESS MY PERSONAL CONVICTION, PARTLY INSPIRED BY THE OPTIMISM, SPIRIT AND ENERGY I FOUND IN RIO DE JANEIRO AT THE EARTH SUMMIT, THAT IT IS A VERY EXCITING AND CREATIVE TIME IN HISTORY TO BE WORKING ON ENVIRONMENTAL ISSUES IN CALIFORNIA. SAVING OUR PLANET WILL REQUIRE THE DIVERSE SECTORS OF OUR STATE TO MAKE UNPARALLELED EFFORTS TO EXCHANGE IDEAS, TO COLLABORATE, AND TO FORM CREATIVE PARTNERSHIPS. MR. STROCK, WITH HIS ENORMOUS ENERGY, CREATIVITY AND DETERMINATION, IS UNIQUELY GIFTED TO LEAD CALIFORNIA AT THIS JUNCTURE OF GREAT OPPORTUNITY AND PRESSING DEMAND. I UNRESERVEDLY SUPPORT SENATE CONFIRMATION OF MR. STROCK AS CALIFORNIA'S FIRST SECRETARY OF ENVIRONMENTAL PROTECTION, AND I LOOK FORWARD EAGERLY TO THE OPPORTUNITY TO WORK WITH MR. STROCK, THE CALIFORNIA LEGISLATURE, ENVIRONMENTALISTS, ACADEMICIANS, CONCERNED CITIZENS, AND BUSINESS OVER THE COMING MONTHS. THANK YOU.

END







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STATE OF CALIFORNIA



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WEDNESDAY, JUNE 24, 1992  
1:42 P.M.

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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

HEARING

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 24, 1992  
1:42 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR NICHOLAS PETRIS

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

VICTORIA L. BRADSHAW, Chief  
Division of Labor Standards Enforcement

LOIS H. HERRINGTON, Member  
Board of Directors  
Hastings College of the Law

SHARON J. SHARP, Director  
California State Lottery

GENE REYES, Legislative Advocate  
ALIANZA

PETER F. BONTADELLI, Chief Deputy Director  
Department of Fish and Game

JOHN J. HOWARD, M.D., J.D., Chief  
Division of Occupational Safety and Health Administration

WILLIAM B. KOLENDER, Director  
California Youth Authority

FERN M. LAETHEM  
State Public Defender



1  
2 STEVE BAKER, Legislative Advocate  
3 Association of California State Attorneys and  
4 Administrative Law Judges

5 ADRIAN K. PANTON, Esq.  
6 State Public Defender

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THERESE POWELL, Esq.  
State Public Defender



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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Now we have appointees, Victoria Bradshaw, Labor Standards.

We traditionally ask the nominee why in the world we should vote for confirmation. So, are you prepared to tell us about your qualifications, experience, and value to the state in that position?

MS. BRADSHAW: I am ready and willing to do that.

Good afternoon. My name is Victoria Bradshaw, and since October of last year, I've had the privilege of serving as the Labor Commissioner for the State of California, which is also known as the Chief of the Division of Labor Standards Enforcement.

I'd like to spend just a half a minute telling you a little about my background and some of the things that we've been doing in the Division for the last several months or so.

My educational background includes a Bachelor of Arts Degree from the University of California at Davis, and a Master's Degree from California State University at Sacramento from the School of Business and Public Administration.

My professional background prior to being appointed Labor Commissioner has been entirely in the private sector. I've had senior level line and staff positions at both the corporate and divisional levels. Some of my positions have included Corporate Vice President of Personnel for the BATUS Retail Group, which included 76,000 employees in such operating





1 companies as Saks Fifth Avenue, Marshall Field and Company,  
2 Fredricka Nelson, Breuner's, and other similar companies.

3 I've also been Vice President of Personnel for  
4 Marshall Field and Company, and Senior Vice President of  
5 Operations for the John Breuner Company.

6 I've also had the experience of owning my own  
7 business, as well as the privilege of working in my family's  
8 restaurant while I was growing up.

9 The transition from the private sector to the public  
10 sector has been very easy, and I would like to spend a few  
11 moments telling you some of the challenges that -- interesting  
12 challenges that have come up in the last seven months that, I  
13 think, will kind of help tell you where my priorities are, and  
14 some of the things we've been able to accomplish.

15 In the Bureau of Field Enforcement, which is one  
16 segment of the Division of Labor Standards Enforcement, we have  
17 refocused the priorities to concentrate in those industries that  
18 have a history of labor law abuses, as well as have a  
19 significant number of low-paid employees. And those industries  
20 we've identified as agriculture, garment manufacturing, and  
21 companies that employ children.

22 And the reason that we're focusing on those  
23 particular industries is because we want to make sure the  
24 resources that we do have --

25 SENATOR PETRIS: Both of those employ children.

26 MS. BRADSHAW: Right, right.

27 There are industries, service industries, that have a  
28



1 high number of children also.

2           Anyway, we want to make sure that the resources that  
3 we do have are being utilized to protect the employees who most  
4 need our assistance and who are the most vulnerable in the  
5 workplace.

6           And as an example, in the agricultural industry, we  
7 developed a 10 point program which is really designed to  
8 alleviate some of the concerns that the farmworkers and the  
9 farmworker advocacy groups have pointed to us over the course of  
10 actually several years, but most recently in the last seven or  
11 eight months. And we, before implementing that program, we  
12 really spent a lot of time working with those interest groups to  
13 make sure that the program that we put together was really going  
14 to help rectify or address the problems that they saw that were  
15 indigenous to that industry. And rather than giving you all the  
16 10 points, I'm just going to tell you about two of them so you  
17 can kind of get the flavor for it.

18           The farmworkers and their advocates felt that some of  
19 our offices were not easily accessible to farmworkers, nor were  
20 they open at convenient hours for them. So as a result, what  
21 would happen is that they didn't feel that they were able to  
22 avail themselves of our services.

23           We created an 800 number that is staffed by a  
24 bilingual agricultural enforcement deputy, so that all a  
25 farmworker has to do is get to a telephone, and then they'll  
26 have access to an individual who can tell them what federal and  
27 state services are available. He can tell them how to go about  
28



1 filing a claim. He can actually get -- mail a claim form to  
2 them, and they can respond back by mail. We can talk to them  
3 about their individual problems, and they can simply notify --  
4 or, they can simply notify us of particular instances.

5 SENATOR PETRIS: When did that start?

6 MS. BRADSHAW: It started in the first part of May,  
7 and we've had some very interesting results with that.

8 SENATOR PETRIS: Have you had a lot of calls?

9 MS. BRADSHAW: Yes, we've had, in fact, recently,  
10 last week, we had three separate calls -- well, actually two  
11 calls that dealt with three employers. And we were able to send  
12 out enforcement units, together with the U.S. Department of  
13 Labor, and we found not only was there overtime and minimum wage  
14 violations, but in some cases there was no record keeping. We  
15 have in two cases potential criminal activity, of which we're  
16 able to -- well, we have under way with the local law  
17 enforcement agents, and in one case where the employees had been  
18 terminated, we've been able to negotiate a settlement; we've got  
19 them back, going back to work. In fact, have negotiated  
20 settlement in excess of what their lost wages were. And all  
21 those came off the toll-free number.

22 SENATOR PETRIS: Were there in effect wrongful  
23 terminations?

24 MS. BRADSHAW: Well, they were --

25 SENATOR PETRIS: Was this in the ag. field or the  
26 other one?

27 MS. BRADSHAW: This was in the agricultural, right.  
28







1           They were terminated for having filed a complaint,  
2 which is Labor Code violation.

3           SENATOR PETRIS: How come the ALRB didn't step in?

4           MS. BRADSHAW: Because it wasn't --

5           SENATOR PETRIS: It wasn't asked to?

6           MS. BRADSHAW: Well, that maybe -- they weren't  
7 brought into it, but it wasn't a question of the union  
8 organizing drive.

9           They were -- they were terminated for -- they were  
10 retaliated against for filing or notifying my particular  
11 Division.

12           SENATOR PETRIS: Was it an unfair labor practice that  
13 they complained about?

14           MS. BRADSHAW: Yeah, but the violation was for having  
15 notified us as opposed to a union organizing drive, and that was  
16 probably the distinction that was made.

17           SENATOR PETRIS: Okay.

18           MS. BRADSHAW: Anyway, the other area that the  
19 farmworker advocates and the farmworkers expressed as being a  
20 concern is that no matter how we expedite our wage processing,  
21 it can't be done sufficiently fast to accommodate the migratory  
22 nature of farmworkers.

23           For example, a farmworker, when it gets to the end of  
24 the harvest in, let's say, Fresno, may find out that he's been  
25 incorrectly paid, will then file a claim. But by the time, even  
26 if it's a matter of days, the claim comes up for a settlement  
27 conference, he may be off to a new harvest in, let's say,  
28



1 Salinas, and, as a result, has to abandon his claim. And that's  
2 been a real problem.

3 So what we started doing as part of this program is,  
4 on a selective basis, doing telephonic hearings, so that the  
5 farmworker can participate in his hearing that's going on in  
6 Fresno by being in our Salinas office, so that they don't have  
7 to abandon their claim.

8 In the agricultural area, this year alone, by  
9 refocusing our efforts, we've done more agricultural inspections  
10 in the first four months of this year than was done in all of  
11 1991.

12 SENATOR PETRIS: Or '90, or '89, or '88.

13 MS. BRADSHAW: Well, most specifically --

14 SENATOR PETRIS: Or '87. Okay.

15 MS. BRADSHAW: In addition to that, what we've done  
16 is, we've tried to maximize our enforcement presence by doing  
17 joint inspections with such other state and federal agencies as  
18 Cal OSHA, the U.S. Department of Labor. And what this does, it  
19 gives us a much larger and much more comprehensive enforcement  
20 presence in the workplace, especially these industries.

21 But in addition to that, it gives us the ability to  
22 tap into and become eligible for other funding sources that we  
23 would not otherwise be eligible for. And as a result, makes our  
24 Division less dependent on general fund monies, which has an  
25 obvious advantage.

26 As an example of that, we are currently doing a joint  
27 project with the Employment Development Department, where we're  
28



1 out looking at potential employers who are not paying their full  
2 tax contribution, in addition may in fact be violating several  
3 other labor laws. Now, this has an advantage both to the  
4 employer and to the employee. Obviously, the ones to the  
5 employer are obvious, but the -- if you have an employer who is  
6 not paying their employees and not paying their taxes, it's very  
7 easy to understand how they can undercut the competition.

8  
9 So, this -- although this project has been in very  
10 short duration, it's been extremely successful. We've done  
11 nearly 800 inspections, and from my Division alone, have issued  
12 nearly 200 citations, and assessing more than a half a million  
13 dollars' worth of penalties. The combined assessments by EDD  
14 and ourself is nearly one million dollars in this very short-  
15 term project.

16 In the garment area, we've done numerous multi-county  
17 sweeps with agencies such as Cal OSHA, in an attempt to make  
18 sure that we have an increased enforcement presence in that  
19 industry. And in fact in March, we were in six counties in a  
20 three-day period, and then followed that up with Cal OSHA  
21 inspections also. Cal OSHA was with us on those inspections.

22 We followed that up with inspections in those same  
23 areas on weekends and nights, which was the first time that we'd  
24 done those kind of inspections. And actually, it was kind of  
25 interesting to see the faces on some of those garment  
26 manufacturers when we walked in at 8:00 o'clock at night, or on  
27 the weekends. They were kind of --

28 SENATOR PETRIS: Which counties were these?







1 MS. BRADSHAW: Pardon?

2 SENATOR PETRIS: Which counties?

3 MS. BRADSHAW: Los Angeles, San Diego, Orange County,  
4 Alameda County, San Francisco and Sacramento.

5 So, anyway, those are some of the things that we've  
6 been involved in over the course of the last seven months.

7 There are many other educational efforts, and  
8 whatnot, that we've been putting our energies into.

9 SENATOR PETRIS: Sounds like you've been very busy.

10 MS. BRADSHAW: It's been a very busy time.

11 SENATOR PETRIS: Any questions from any of the  
12 Members?

13 Are there any witnesses here to testify in support of  
14 the nomination or any witnesses in opposition?

15 I'd like to follow-up on the garment workers'  
16 problem. One of their problem areas is in Oakland, where I  
17 live. It seems that when you have an enforcement presence,  
18 things happen.

19 The problem's been in the past years, there was never  
20 any enforcement presence. So, any activity is a big  
21 improvement.

22 I commend you for moving in on that area.

23 Now, we've had the problem of these sweatshops in  
24 which -- you're familiar with it more than I -- the employees  
25 are treated like property. In some places, they've been given a  
26 dollar an hour for 12-hour days. And then in one case that's  
27 being pursued by you now, the owners absconded with whatever  
28



1 money they had and left the employees holding the bag for  
2 hundreds of thousands of dollars.

3 I understand that the fund set up for that purpose is  
4 empty because periodically the money's returned to the general  
5 fund. And you've asked Controller Gray if that could be  
6 returned.

7 Can you tell us the status of that request?

8 MS. BRADSHAW: Yes.

9 Each year, as you know, the State Controller's Office  
10 removes any surplus for that particular year.

11 SENATOR PETRIS: Is that done automatically?

12 MS. BRADSHAW: Yes.

13 And in fact, I brought copies of the budget which  
14 shows where it actually -- the amounts that have been taken in  
15 the last three years pursuant to that particular Labor Code.

16 SENATOR PETRIS: The only way to beat that is to hire  
17 more people and get more inspectors out there, and get the work  
18 done; right?

19 MS. BRADSHAW: Well, here are a lot of alternatives,  
20 all of which we're looking at this particular point in time.

21 What we're doing, to answer your question, though, in  
22 terms of what's happening in this particular situation, as you  
23 may know, we asked the Department of Finance for an emergency  
24 appropriation so that we could in fact spend more than the  
25 \$50,000 that we appropriate every year, up to whatever has  
26 been collected this year, which we anticipate to be about  
27 \$154,000.  
28



1  
2 This request for a deficiency appropriation was  
3 approved by the Department of Finance, and then filed with the  
4 Joint Legislative Budget Committee, and they now have it on  
5 file. And assuming we get it, or even when we get approval on  
6 that, we will begin disbursing those monies.

7 We are now looking at disbursing up to the \$50,000  
8 appropriation level I have.

9 We have not yet heard back from Mr. Davis's office.  
10 We expect to hear back soon, but as soon as we hear back, I'll  
11 be happy to update you on it.

12 SENATOR PETRIS: Yes. I personally would like to  
13 know.

14 We're pursuing that in the Industrial Relations  
15 Committee. We had a bill on that today. In fact, I wanted to  
16 ask you about that before I relinquish the gavel.

17 These sweatshops serve the actual official  
18 manufacturer, which pays them very, very puny amounts of money.  
19 We were told in the Committee that the owners of the sweatshops  
20 really can't afford to pay the minimum wage because of the very  
21 low amounts they get for these garments, which they sell for a  
22 very, very handsome price, and that includes some of the smart,  
23 chic stores.

24 Now, they send people in from time to time on a  
25 quality control kind of situation to check out production. So,  
26 there's a bill we heard to day that would impose liability on  
27 the manufacturer for labor violations in the garment shop which  
28 they, in effect, control. They control it for quality; they





1 control it for price; they control it in a number of areas. And  
2 it is felt that they are probably the most influential source  
3 for compelling the subcontractor to obey the law with respect to  
4 labor.

5 The bill would subject them to a fine, along with the  
6 sweatshop, for the violations.

7 Does that strike you as an improvement in an  
8 enforcement tool?

9 MS. BRADSHAW: Well, I think if you look at the  
10 arrangements between the actual garment manufacturer and the  
11 vendor, there are a variety of different relationships. And I  
12 think to categorize it as one or the other probably does not  
13 truly identify how that arrangement works.

14 There are probably situations where they really do  
15 control to a great deal, but there are many others where the  
16 garment manufacturer themselves really are running their own  
17 business and contract out to a variety of vendors.

18 So, I don't think necessarily that it answers the  
19 question to every particular situation in the garment industry.  
20 I think it's far more complex than that.

21 For instance, in the Oakland area, you have a  
22 tremendous variety in the type of garment manufacturers that you  
23 have. You have a little over 150 of them, and between November  
24 and March, we saw all 150 of them.

25 So, the -- you can see that it probably will need  
26 some more tailoring than just a simple answer to that particular  
27 problem. I think it's a little more complex.



1           SENATOR PETRIS: Are you familiar with the  
2 legislation? Have you had a chance to look at it?

3           MS. BRADSHAW: I haven't seen it since -- if it's  
4 been revised. I saw it initially, yes.

5           SENATOR PETRIS: I'd like to have you take a look at  
6 it. You may have some suggestions for improving it, but I think  
7 they're on the right track.

8           It's hard to give away -- I mean, give these  
9 explanations that we all give as to why we can't do this or why  
10 we can't do that, but the workers are down there.

11           They just sound like a 19th or 18th Century operation  
12 in the way they exploit the workers. They treat wages as a  
13 loan, and they charge them interest for their wages. And often  
14 they don't pay it, and then this most recent case, one in San  
15 Francisco and one in Oakland, they just absconded with it and  
16 went to Hong Kong. I guess the woman is now awaiting trial.

17           MS. BRADSHAW: Right, on criminal charges that --

18           SENATOR PETRIS: That you filed.

19           MS. BRADSHAW: Right.

20           SENATOR PETRIS: Okay, well, that's great. I'm very  
21 impressed with that. I hope you are able to maintain that.

22           MS. BRADSHAW: But one thing, just to let you know,  
23 there are some very responsible garment manufacturers and  
24 vendors out there.

25           SENATOR PETRIS: Yes, right.

26           MS. BRADSHAW: Also, the vendors, for instance, when  
27 the Kong situation came down, it was buyers who came up with  
28



1 \$250,000 to pay the employees the two weeks' salary that they  
2 would not have gotten otherwise, because obviously, the Kongs  
3 were in Hong Kong by that point.

4 So, there are some very --

5 SENATOR PETRIS: There's some good guys there.

6 MS. BRADSHAW: There's some real abuses, but there  
7 are some people who are trying to play legitimately.

8 SENATOR PETRIS: Right.

9 Thank you, Mr. Chairman.

10 CHAIRMAN ROBERTI: Is there a motion before us?

11 SENATOR BEVERLY: Move the recommendation to be  
12 approved.

13 CHAIRMAN ROBERTI: Senator Beverly moves the  
14 nomination of Victoria Bradshaw be recommended, Chief, Division  
15 of Labor Standards Enforcement, to the Floor.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye.

20 Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Mello Aye.

23 Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye.

26 Senator Craven. Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.  
28





1 SECRETARY WEBB: Roberti Aye.

2 CHAIRMAN ROBERTI: The vote is four to zero;  
3 confirmation is recommended to the Floor.  
4

5 Congratulations.

6 MS. BRADSHAW: Thank you.

7 [Thereupon the Senate Rules  
8 Committee acted upon legislative  
9 agenda items.]

10 CHAIRMAN ROBERTI: Back to appointees, Lois  
11 Herrington, Member of the Board of Directors of Hastings College  
12 of the Law.

13 Ms. Herrington, we'll ask you what we ask all the  
14 Governor's appointees, and that is why you feel you're qualified  
15 to assume this position?

16 MS. HERRINGTON: Well, I'm a graduate of Hastings.  
17 I'm a graduate of the U.C. system. I have a very strong  
18 interest in what happens in the -- in this area, certainly with  
19 our law students.

20 I've had some very different jobs in my past: a  
21 former prosecutor, probation officer, juvenile hall counselor,  
22 U.S. Attorney General -- Assistant U.S. Attorney General. I've  
23 chaired the Victims of Crime Task Force. I've chaired the  
24 Congressional task force created by Congress on Drug-Free  
25 America.

26 I just have a tremendous concern about our students,  
27 how they're treated, how they're doing in law school, what we  
28 are producing. And I think I would give a lot of care and



1 consideration to this issue.

2 CHAIRMAN ROBERTI: Thank you very much.

3 Are there any questions?

4 Is there anyone here in opposition to the nomination  
5 of Lois Herrington?

6 SENATOR PETRIS: While you're looking through that, I  
7 want to commend the Board for finally finding a woman that they  
8 could recommend. It shouldn't have been that difficult.

9 Next we'll work on some other minority representation  
10 as well, next go-around; okay?

11 Thank you.

12 CHAIRMAN ROBERTI: Well, I looked through my letters.  
13 Your resume's very impressive, and I don't see any opposition in  
14 the audience.

15 SENATOR BEVERLY: Move the Committee recommend  
16 approval.

17 CHAIRMAN ROBERTI: We're going to do this quick.

18 Senator Beverly moves confirmation be recommended to  
19 the Floor.

20 Secretary will call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye.

24 Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Mello Aye.

27 Senator Petris.  
28



1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye.

3 Senator Craven. Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 SECRETARY WEBB: Roberti Aye.

6 CHAIRMAN ROBERTI: The vote is four to zero;  
7 confirmation is recommended to the Floor.

8 Congratulations.

9 MS. HERRINGTON: Thank you very much.

10 CHAIRMAN ROBERTI: Sharon Sharp, Director of the  
11 California State Lottery.

12 Ms. Sharp, we're going to ask you the same question,  
13 and that is why you feel you are qualified to assume this  
14 position; although, you've held it for a little while now.

15 MS. SHARP: Yes, I've been here since October,  
16 Senator.

17 Prior to my coming here, I had been Director of the  
18 Illinois Lottery for nearly four years. Served as a lottery  
19 consultant for six months after I left that position. So, I've  
20 had long time experience for a Lottery Director in the lottery  
21 business, and I've also served in state government for the past  
22 dozen years with Governor Jim Thompson's administration in  
23 Illinois in various positions.

24 CHAIRMAN ROBERTI: Very good.

25 Are there any questions? Senator Petris.

26 SENATOR PETRIS: There was a lot of fanfare when your  
27 predecessor was fired. The Governor said that he just wasn't  
28





1 doing a good job because sales dropped. He forgot that there  
2 was a recession in the land.

3 Have sales continued to drop under your stewardship?

4 MS. SHARP: Yes, they have, which is not a surprise,  
5 by the way. About the day I came here eight months ago, I  
6 explained that we're looking at 18 months.

7 And there is -- it's very difficult to turn around a  
8 lottery once it has started to fall.

9 And I must tell you that, coming from Illinois eight  
10 months ago, I minimized the impact of the recession. But we see  
11 it now with our retailers. We see those problems. So, even  
12 though we've had some small success in, like, say for instance,  
13 instant ticket sales, we've had increases there -- the lottery  
14 business is kind of a unique business -- we have seen, indeed, a  
15 recessionary impact.

16 SENATOR PETRIS: Where's Elk Grove? Is this in  
17 Illinois.

18 MS. SHARP: Elk Grove Township, yes. That is a  
19 suburb of Illinois.

20 SENATOR PETRIS: It's not ours.

21 MS. SHARP: Not your Elk Grove. I'm always living  
22 near an Elk Grove.

23 SENATOR PETRIS: Thank you.

24 MS. SHARP: Thank you, Senator.

25 CHAIRMAN ROBERTI: Any other questions?

26 Is there any opposition in the audience?

27 SENATOR BEVERLY: Move confirmation be recommended.  
28



1 CHAIRMAN ROBERTI: Senator Beverly moves  
2 confirmation.

3 Please come forward.

4 MR. REYES: Mr. Chairman, my name is Gene Reyes. I  
5 represent Alundo Lopez, who is the President of the ALIANZA.

6 Originally, we had submitted a letter of concern  
7 regarding the confirmation of Ms. Sharp, the Director of the  
8 Lottery.

9 But since then, we have met and addressed all issues  
10 of concern, and we wanted to be reflected in the record that we  
11 now support the confirmation of the Director, Ms. Sharp, as  
12 Director of the Lottery.

13 CHAIRMAN ROBERTI: Thank you very much for coming  
14 forward. We appreciate it.

15 MR. REYES: Thank you.

16 CHAIRMAN ROBERTI: Senator Beverly has a motion  
17 before us.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye.

22 Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Mello Aye.

25 Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye.  
28



1 Senator Craven. Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 SECRETARY WEBB: Roberti Aye.

4 CHAIRMAN ROBERTI: The vote is four to zero;  
5 confirmation's recommended to the Floor.

6 Congratulations.

7 MS. SHARP: Thank you, gentlemen.

8 Please buy some tickets now.

9 CHAIRMAN ROBERTI: Oh, yes, absolutely.

10 [Laughter.]

11 CHAIRMAN ROBERTI: Peter Bontadelli, Chief Deputy  
12 Director, Department of Fish and Game.

13 Is this the third time you've been here? We'll ask  
14 you the same question, or, instead of asking you why you're  
15 qualified to assume the position, tell us about your  
16 stewardship.

17 MR. BONTADELLI: Okay.

18 Basically, I assumed the position as the  
19 Administrator of the Office of Oil Spill Prevention and Response  
20 within Fish and Game in January.

21 Since that time, we have been able to fully implement  
22 the financial responsibility provisions of the statute, which is  
23 the only effective program of its kind anywhere in the country,  
24 including at the federal level. And many of the items that  
25 we've been able to implement through those regulations are  
26 currently being viewed as a potential pattern to resolve  
27 conflicts elsewhere.  
28





1           Our contingency planning process is well underway,  
2 with public hearings that have been held in the last month in  
3 both the areas of Prevention and Response that are part of that.  
4 And we anticipate, by the end of the year, being fully up to  
5 speed in that area with the regulations in place.

6           In the area of lightering and bunkering, or transfers  
7 of products, with the budget that's still proposed, it appears  
8 that we will have the positions to begin the full program in  
9 that area, which has been the highest risk area for reducing  
10 spills.

11           And lastly, we have been able to fully integrate with  
12 the Coast Guard, through an MOU, for a smooth transition and  
13 joint operations in the event of a significant incident at the  
14 state and federal levels.

15           Likewise, the conflicts that had been raised by some  
16 with local government seem to have been ironed out with  
17 modifications of the regulations on the grant program to local  
18 governments.

19           So, I think we have a program that is basically in  
20 place, relatively operative in about a little under six months,  
21 and feel very comfortable with the staff we have in place.

22           CHAIRMAN ROBERTI: Very good.

23           Are there any questions of Mr. Bontadelli?

24           Is there any opposition in the audience?

25           Do I hear a motion?

26           SENATOR BEVERLY: Move confirmation.

27           CHAIRMAN ROBERTI: Senator Beverly moves the  
28



1 confirmation be recommended to the Floor.

2 Secretary, call the roll.

3 You're getting off easy.

4 SECRETARY WEBB: Senator Beverly.

5 SENATOR BEVERLY: Aye.

6 SECRETARY WEBB: Beverly Aye.

7 Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Mello Aye.

10 Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye.

13 Senator Craven. Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 SECRETARY WEBB: Roberti Aye.

16 CHAIRMAN ROBERTI: The vote is four to zero;  
17 confirmation's recommended to the Floor.

18 The next appointment is John J. Howard, Chief of the  
19 Division of Occupational Safety and Health Administration.

20 Mr. Howard, we'll ask you what we ask all the  
21 Governor's appointees, why you feel you're qualified to assume  
22 this position?

23 DR. HOWARD: Prior to assuming the position that I  
24 have as Chief of the Division of Occupational Safety and Health  
25 on September the 3rd, 1991, I was a faculty member on the  
26 University of California at Irvine, School of Medicine faculty,  
27 as a Professor in the Department of Occupational Medicine.  
28



1           With a long-standing career interest in occupational  
2 health and safety, I believe that my professional background in  
3 this area qualifies me for the position.

4           CHAIRMAN ROBERTI: Thank you very much.

5           Are there any questions of Mr. Howard?

6           Senator Petris.

7           SENATOR PETRIS: Yes, it's Dr. Howard.

8           CHAIRMAN ROBERTI: Excuse me, Doctor.

9           DR. HOWARD: That's quite all right.

10          SENATOR PETRIS: He has an M.D., and a J.D.

11          Has that been helpful, your J.D.?

12          DR. HOWARD: I think it's very helpful in the area of  
13 public health regulations, of which Occupational Safety and  
14 Health regulations are a part.

15          SENATOR PETRIS: Thanks.

16          CHAIRMAN ROBERTI: Is there anyone in the audience in  
17 opposition to the appointment?

18          Then do I hear a motion?

19          SENATOR BEVERLY: Move confirmation be recommended.

20          CHAIRMAN ROBERTI: Senator Beverly moves confirmation  
21 be recommended to the Floor.

22          Secretary, call the roll.

23          SECRETARY WEBB: Senator Beverly.

24          SENATOR BEVERLY: Aye.

25          SECRETARY WEBB: Beverly Aye.

26          Senator Mello.

27          SENATOR MELLO: Aye.  
28





1 SECRETARY WEBB: Mello Aye.

2 Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Petris Aye.

5 Senator Craven. Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 SECRETARY WEBB: Roberti Aye.

8 CHAIRMAN ROBERTI: The vote is four to zero;  
9 confirmation's recommended to the Floor.

10 Congratulations.

11 DR. HOWARD: Thank you, sirs.

12 CHAIRMAN ROBERTI: The next appointment is William  
13 Kolender, Director of the Youth Authority.

14 Good to see you here again.

15 MR. KOLENDER: Thank you, sir.

16 CHAIRMAN ROBERTI: We will ask, I guess, to review  
17 your stewardship of the position.

18 MR. KOLENDER: It's been nine months.

19 As you know, I was with the San Diego Police  
20 Department for a long time.

21 CHAIRMAN ROBERTI: I know, right.

22 MR. KOLENDER: Chief for 13 years, and then with the  
23 newspapers.

24 I was appointed to the Board of Governors of the  
25 Community Colleges and served two terms.

26 While I was with the Chief -- with the Police  
27 Department, I was Chairman of the Task Force to Integrate the  
28



1 City Schools.

2 In the nine months I've been with the Youth  
3 Authority, I must tell you I'm impressed with the -- with their  
4 mission, and the people who work there. I think they're  
5 dedicated. They've been there sometime. They're committed, and  
6 they like what they do. I've enjoyed the time I've spent with  
7 them.

8 I looking towards improving the areas of education  
9 and our commitment to employment of the wards, and the classes  
10 in victims' rights, and in parenting.

11 I think we're doing very well. We're obviously  
12 concerned about the budget. I think it's moving right along.

13 CHAIRMAN ROBERTI: Very good.

14 Are there any questions?

15 Is there anyone in the room in opposition to the  
16 appointment?

17 Then, in a number of capacities we're heard  
18 Mr. Kolender's appointment. He's very well qualified in just  
19 about everything he's been assigned.

20 MR. KOLENDER: Thank you.

21 CHAIRMAN ROBERTI: Do I have a motion?

22 SENATOR BEVERLY: Move approval of the Chief's  
23 confirmation.

24 CHAIRMAN ROBERTI: Senator Beverly moves  
25 confirmation.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Beverly.  
28



1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye.

3 Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Mello Aye.

6 Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye.

9 Senator Craven. Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 SECRETARY WEBB: Roberti Aye.

12 CHAIRMAN ROBERTI: The vote's four to zero;  
13 confirmation's recommended to the Floor.

14 It's good to see you again.

15 MR. KOLENDER: Thank you very much.

16 CHAIRMAN ROBERTI: The next appointment is that of  
17 Fern Laethem, State Public Defender.

18 Ms. Laethem, we'll ask you what we ask the Governor's  
19 appointees, and that's why you're qualified to assume this  
20 position.

21 MS. LAETHEM: Thank you.

22 Mr. Chairman, Members of the Rules Committee, when I  
23 last appeared before you, it was just a few months into my first  
24 terms as the State Public Defender, and our agency was providing  
25 appellate representation to criminal defendants in felony cases  
26 in district courts throughout the state, as well as in death  
27 penalty cases in the California Supreme Court.  
28





I have been directed to phase the agency out of Court of Appeals cases and into the arena of capital representation.

Today, this agency's representation is almost exclusively in the California Supreme Court for individuals under a sentence of death.

This critical change in the agency's mission, and the growing, very growing, number of unrepresented defendants on Death Row, required a reassessment and re-evaluation of how we handled our cases. I've implemented several changes which I believe, over the last three years, have made our representation in these cases more effective, and should also enable us to provide representation to more of the Death Row population currently without counsel. I'd like to tell you about a few of them.

When I was appointed, we had a completely inadequate system of assessing and monitoring staff performance. Several actions were taken to remedy this situation. First, I established the position of Director of Capital Litigation, and we had and have in this position a skilled and able attorney. The Director of Capital Litigation oversees and supervises all of OSPD's capital caseload and reports to me on a regular basis. He communicates regularly with each of the attorneys assigned to capital cases, assesses and monitors performance, and makes appropriate recommendations.

Second, I instituted a comprehensive case review and monitoring system. Each month, the chief in each office meets with the attorneys to discuss and evaluate case progress. This



1 includes setting short-range goals for the coming months, as  
2 well as longer range goals for the next several months. The  
3 previous month's goals are compared to the actual work  
4 performed, and if it's fallen short of the goals, the reasons  
5 are reviewed, suggestions are made for future performance, and  
6 action is taken. Based on these individual monitoring sessions,  
7 the chief assistance prepares a report for my review.  
8

9 Right now, we are in the process of developing a new  
10 personnel evaluation program. I've been in contact with  
11 directors of defender organizations throughout the United  
12 States. I've gotten ideas and materials from them, and in the  
13 near future, we're going to implement this. We believe that  
14 this assessment tool will be a wonderful benefit, not only to --  
15 to all of us because it will provide the attorneys with an  
16 ongoing assessment that will help them progress, and will help  
17 them better serve our clients.

18 One of my priorities when I took over, one of the  
19 things that I felt were -- was missing in the agency was a  
20 formal training program. For over 14 years, this agency has  
21 been without one.

22 There was quite a lot of historical background to the  
23 feeling in the agency that we didn't need a formal program. We  
24 didn't need to spend money on somebody whose job it would be  
25 just to train attorneys, and we didn't need to spend money on  
26 attorneys for a period of time when they weren't producing  
27 cases.

28 I believed that if we established a training program





1 and put into that program a skilled director, that any money we  
2 spent would come back to us three-fold in increased  
3 effectiveness and productivity.  
4

5 From within the agency, I put into this position an  
6 attorney who's a published writer, a skilled litigator, and had  
7 teaching experience. He has established for the State of  
8 California one of the few formal training programs for new  
9 defenders in the United States. For the first month in our  
10 agency, a new attorney does not casework. He or she is put  
11 through a rigorous program that includes training in research,  
12 writing, and oral advocacy, and which sets out and makes clear  
13 the standards and expectations for the attorneys in our agency.

14 We've tracked the progress of these lawyers as  
15 they've gone through the program during an 18-month period, and  
16 our data clearly shows that they're performing better and more  
17 effectively than similarly situated attorneys who didn't have  
18 the benefit of this training program. They're being assigned  
19 death penalty cases much sooner, and they're qualified to handle  
20 them. In fact, most of them, within one year after completing  
21 the training, are on death penalty cases. In the past, it was  
22 taking four to five years.

23 I believe that our assessment for the need for this  
24 program was correct, and I think that it has been an absolutely  
25 wonderful, wonderful tool to help us better represent our  
26 clients.

27 One of the problems that it was felt that this agency  
28 had when I took over was that we did not have a comprehensive





1 time keeping and docketing system. In fact, there was no  
2 effective management information system to track cases and  
3 monitor the work.

4 We now have a statewide integrated office automation  
5 system functioning in each of the regional offices. There are  
6 two components to it. There's a time keeping part, and there's  
7 a docketing part that allow concurrent access to both the status  
8 of the case and the number of hours expended on it by the  
9 assigned attorney. It runs in each office and provides  
10 information in a common format to both regional and central  
11 office management and personnel. It allows us to keep track of  
12 the cases and the activities in a detailed fashion.

13 The data that we are generating will, for the first  
14 time, help us determine what a workable capital caseload is, as  
15 opposed to a workable Court of Appeal caseload, and what can be  
16 expected of individual attorneys.

17 In addition, this information is going to help us  
18 provide the information that control agencies have asked us for,  
19 and help determine the efficiency of the office by comparing the  
20 amount of case-specific and non-case-specific time expended,  
21 much the same as a private law office that tracks their billable  
22 hours.

23 But most importantly, these reports can be generated  
24 for the attorneys, so that they can take a look at where they're  
25 spending their time, how they're spending their time, and then  
26 they can help themselves to adjust, if they think it's  
27 necessary, to be more effective, and to provide better  
28



1 representation to our clients.

2 We didn't have any paralegals when I was appointed.  
3 And I believe and still believe that paralegal professionals aid  
4 an office in running effectively. They're cost effective  
5 because they can do the work which not only assists lawyers, but  
6 frees the lawyers to do substantive legal work that they're  
7 trained for. Additionally, paralegals can perform tasks that,  
8 in the past, we had to pay investigators \$40 an hour, outside  
9 investigators on contracts, to perform.

10 We started out with one paralegal. She now  
11 supervises a staff of three, and it is my hope that someday in  
12 the near future, we'll be able to expand this program. It has  
13 saved us money, and it's enabled us to provide our clients with  
14 better representation.

15 Additionally, our paralegal supervisor is in the  
16 process of developing a program to train our support staff in  
17 some of the organizational areas of case management that'll  
18 maximize the use of our support staff. It'll help them to  
19 expand their knowledge and provide cross-training, and it'll  
20 free the paralegals to concentrate on the more substantive work  
21 requested by the attorneys. We are hopeful this will be  
22 equally successful once implemented.

23 There has been absolutely nothing but praise in our  
24 office for this paralegal program, for the staff and for the  
25 work they perform.

26 When I was appointed three years ago, we had 70  
27 authorized attorney positions. With your support, with the  
28



1 support of the Administration and the court, I was able, over a  
2 two-year period, to get increased funding to bring that number  
3 up to 95.

4 Budget cuts over the last year brought our authorized  
5 positions down to 68. The current budget crisis has forced us  
6 to take a hard look at our operations and has resulted in the  
7 most difficult decision and change that I've had to deal with  
8 and implement since I've been appointed.

9 That change was the announcement on June 17th that we  
10 intended to close one of our three regional offices and transfer  
11 employees to the two remaining offices. That is, to the  
12 Sacramento and San Francisco offices.

13 This decision to close a regional office was  
14 predicated on our belief that if we didn't attempt to devise  
15 some type of long-term solution, but merely adjusted in a  
16 haphazard fashion to year-by-year budget cuts, our effectiveness  
17 in representing our clients would be steadily destroyed, and  
18 ultimately we would cease to exist as a viable agency. We would  
19 never achieve our goal, which is to provide effective  
20 representation, aggressive effective representation, to as many  
21 indigent capital defendants as possible.

22 If, through a layoff process, staff reductions are  
23 spread through three offices, cases are going to have to be  
24 reassigned on a piecemeal basis; overhead remains the same.  
25 More cuts will continue to compound the problem. There'll be  
26 absolutely no ability to plan for the efficient use of  
27 resources, for maximizing them, for operations, training, and  
28







1 supervision.

2           The enormity of this decision has weighed heavily on  
3 me, and it has been an absolutely agonizing one. But it's  
4 ultimately one that, in evaluating all the factors, that I  
5 believe in the long-term will enable us to provide a logical  
6 organizational structure, strong in accountable leadership,  
7 efficient use of resources, adequate training and supervision,  
8 and a skilled staff.

9           Mr. Chairman, what -- undoubtedly what you're hearing  
10 from me today is something you're going to hear from people in  
11 the future because of the necessity to reduce state spending.  
12 And none of the decisions that I've had to make have been easy.  
13 And the people that are affected by them are understandably  
14 stressed, and anxious, and angry. I don't think I'd be any less  
15 so in their place. In fact, I know that I wouldn't.

16           And I know that they have their own reasons as to why  
17 these decisions are being made.

18           I don't say this to in anyway pat myself on the back,  
19 but just simply as a matter of fact.

20           I was told of this hearing just a couple of days  
21 before I announced my decision. I could have delayed the  
22 closure announcement until the meeting, because it was only a  
23 matter of a week, but I didn't, and I chose not to because I  
24 believe in the necessity of my decision, and I wanted to be  
25 up-front about it. I felt it was important that, in making this  
26 decision, that it needed to be done regardless of any personal  
27 consequences.  
28



1           Each of the changes that I've discussed have made the  
2 agency more effective in discharging its duties to our clients.  
3 This last decision was difficult. I can't even describe it. It  
4 was an agonizing and difficult decision, made within a current  
5 economic reality. And I believe that within that reality, in  
6 the long-term, this -- and for the long-term, this is the  
7 decision that has to be made.

8           Three years ago, you showed your faith in me through  
9 your vote to confirm my appointment as State Public Defender. I  
10 have tried over these three years to run this agency in a way  
11 that reflected credit to your decision by discharging every duty  
12 that I've had to the best of my ability. And I'm very proud of  
13 what I've accomplished.

14           I believe I'm qualified to continue to direct this  
15 agency, and I respectfully ask that you vote to confirm my  
16 appointment as the State Public Defender.

17           CHAIRMAN ROBERTI: Thank you very much, Ms. Laethem.

18           Let me start by asking you just a question on the  
19 closing of the Los Angeles office.

20           I have some information indicating that the Los  
21 Angeles office actually, in regard to the number of death  
22 penalty cases, has the highest number of cases. Am I correct?

23           MS. LAETHEM: The San Francisco office, sir, has 13;  
24 Sacramento has 17; and the Los Angeles office has 18.

25           CHAIRMAN ROBERTI: Is that apportionment a fair  
26 assessment as to what the workload is?

27           MS. LAETHEM: Can I answer that by -- if I might, and  
28



1 if I'm not answering, tell me -- by, I mean, obviously saying  
2 that the caseload, and analyzing the caseload, had to be one of  
3 the clear factors in dealing with this.

4 And what we looked at were not just the numbers, but  
5 the cases themselves. Of these cases, numbers that I've just  
6 given you, the Sacramento office has seven cases which are in  
7 the pre-opening brief stage. The San Francisco office has nine  
8 cases which are at this stage. That is, these are the cases  
9 which require -- there're at the very beginning. They require  
10 the very most work.

11 The Los Angeles office has three cases that are in  
12 this status.

13 The chief assistant of the offices gave us the --  
14 gave us information projecting where their cases are, and where  
15 they will be going.

16 It is our belief, after analyzing this information,  
17 including analyzing where these cases are at, that of the three  
18 caseloads, the one that is the most easily absorbed by the other  
19 two offices -- and we analyzed it from the perspective of each  
20 office -- is the Los Angeles caseload.

21 Additionally, in the Los Angeles caseload, there are  
22 approximately ten cases which we believe that the attorneys who  
23 are working on them, and they'll continue to work on them, these  
24 cases can be completed within six months on the state's side,  
25 because at this point, for various reasons, not the least of  
26 which is budget, we are no longer going into federal court.  
27 That was another factor in analyzing the cases.  
28







1 CHAIRMAN ROBERTI: Was the fact that you chose to  
2 close the Los Angeles office instead of the San Francisco office  
3 based in any way on the fact that the Supreme Court sits in San  
4 Francisco?

5 MS. LAETHEM: There were a lot of these other types  
6 of factors that we looked at. We looked at where our clients  
7 were. Our clients are in San Francisco; they're all at San  
8 Quentin.

9 We looked at where the Court is; the Court is in San  
10 Francisco, at least their main headquarters.

11 We looked at where the seat of government was; where  
12 our control agencies were; where the Legislature and the  
13 Administration are. That was in Sacramento.

14 Those were also components of this decision.

15 CHAIRMAN ROBERTI: The fact that San Quentin is in  
16 San Francisco, did that weigh heavier than the fact that the  
17 Supreme Court is in San Francisco?

18 MS. LAETHEM: Yes, it did. Our -- our clients are  
19 there, and that weighed very heavily in this decision. As far  
20 as --

21 CHAIRMAN ROBERTI: Are Death Row, they're all in San  
22 Quentin?

23 MS. LAETHEM: Yes. Oh, there is one exception with  
24 -- there is a woman who is not housed there.

25 CHAIRMAN ROBERTI: Is there any opposition in the  
26 audience -- well, concerns or opposition?

27 MR. BAKER: Mr. Chairman, Members, Steve Baker with  
28



1 Aaron Read and Associates, representing the Association of  
2 California State Attorneys and Administrative Law Judges, which  
3 includes the public defenders, the attorneys at the Public  
4 Defender's Office.

5 First of all, we do not oppose Ms. Laethem's  
6 appointment. We only became aware of the proposal to close the  
7 L.A. office within the last day. And for that reason, we really  
8 do have just some concerns.

9 But we would like to ask this Committee that we have  
10 an opportunity to resolve those concerns before you take action  
11 on her confirmation.

12 I would like to just take a minute to highlight what  
13 our concerns are, and then I have some of the folks here from  
14 the Public Defender's Office, from both the San Francisco office  
15 as well as the Los Angeles office, that could answer any  
16 specific questions you might have about their operations.

17 First of all is the cost. I'm going to list concerns  
18 without any real priority.

19 One of the things that we know you're wrestling  
20 around with is the state budget, and resolving that budget  
21 crisis.

22 As far as the cost, we believe that it's far cheaper  
23 to maintain operations in the L.A. office because of the  
24 workload. There is quite a bit of work that will have to be  
25 done in the future in Los Angeles: conducting the  
26 investigations and the other aspects of the cases.

27 The Public Defender's Office in L.A. operates out of  
28



1 the downtown L.A. State Building, which has lower overhead than  
2 the other offices in San Francisco or Sacramento, where their  
3 office space lease is more expensive.

4  
5 Ms. Laethem also talked about the need to train staff  
6 so that they've got experienced staff.

7 The effect of closing the Los Angeles office is  
8 really to eliminate the folks in the L.A. area, because most of  
9 the folks down there have already indicated that they're not  
10 willing to transfer. They'll leave state service. Therefore,  
11 the Public Defender's Office is going to lose a great deal of  
12 experience.

13 And I think that the Public Defender's Office has an  
14 experience problem, where they've got a lot of young, less  
15 experienced attorneys, and then some more experienced folks.  
16 And what happens with closing an entire office is that we'll be  
17 getting rid of all of those individuals. So, that's really a  
18 key concern.

19 We're also concerned that there's going to be a lot  
20 of waste of time, because if the folks in the L.A. office decide  
21 to leave state service, as they've indicated, then that means  
22 that attorneys in the other offices -- Sacramento and San  
23 Francisco -- will have to be brought up to speed on those cases.  
24 And because of the complexity of the cases, that could take a  
25 considerable amount of time.

26 As far as -- there's also a logistics question with  
27 travel. Without having anybody in the L.A. office right now,  
28 there are a lot of economies that exist by utilizing the L.A.





1 office space.

2           And the last thing that I would like to list as a  
3 concern is the Department's affirmative action hiring goals.  
4 I think that the Department's under a requirement by the State  
5 Personnel Board to improve their affirmative action hiring, and  
6 it just so happens that the L.A. office is where the minority  
7 representation in Public Defenders exists. So, we would also  
8 see a problem with the affirmative action.

9           I do have a petition here from a large number of the  
10 Public Defenders from throughout the state who would like to ask  
11 you, again, not to oppose her confirmation, but give us an  
12 opportunity to explore some of these concerns. We'd like to  
13 share that with the Committee.

14           As far as closing the office now, we do think that  
15 that is just a little bit premature. The Legislature has not  
16 adopted a budget yet. We still don't know what the outlines of  
17 that entire budget agreement are going to be. And we think that  
18 there are some other solutions that could be used to reduce the  
19 size of staff without closing the office.

20           The Governor just offered an early retirement  
21 incentive to state employees. We don't know whether or not  
22 that's going to work, and how many of the Public Defenders are  
23 going to take advantage of that option.

24           We think that there's a lot of other things that can  
25 be done, other than just simply closing the L.A. office, and  
26 we'd like to explore those.

27           Again, I have some of the attorneys with the Public  
28



1 Defender's Office that are available to answer any specific  
2 questions on their operation.

3 CHAIRMAN ROBERTI: Thank you very much.

4 What about the question of other options? Did you  
5 explore that?

6 MS. LAETHEM: We did, sir.

7 May I address some of these, because --

8 CHAIRMAN ROBERTI: Yes, please.

9 MS. LAETHEM: -- it all seems to become a part of it.

10 As far as the cost, closing any regional office --  
11 L.A., Sacramento, or San Francisco -- is going to result in some  
12 cost savings.

13 The fact of the matter is, if you're looking simply  
14 at per square foot rates, they aren't all that different.

15 One of the other factors that we took into  
16 consideration in looking at them, although this - the rent was  
17 not, you know, something that drove this, is the fact that we  
18 have already been notified as far as the L.A. office goes, that  
19 in a few years, we will no longer be in that building. We are  
20 being moved out to a new office building that is being built  
21 opposite the Ronald Reagan Building. And so, in fact the cost  
22 -- the cost will go up there.

23 We do have a very experience staff in our Los Angeles  
24 office. That is quite true.

25 We are, number one, very hopeful that many of these  
26 attorneys will transfer. At the present time, our indications  
27 are that there are four attorneys that -- one that is definitely  
28



1 transferring, who was going to transfer anyway, and three others  
2 that are considering transferring.

3 We also looked at experience. It's true that there  
4 are attorneys that have 14 and 15 years' worth of experience.  
5 But we also have attorneys in our other two offices that have  
6 experience in the 5, 6, 7-year range that are fully qualified to  
7 handle these cases. And at a certain point, while 15 years is  
8 more than 7, the quality of this experience, the qualifications  
9 of these attorneys, are excellent.

10 One of the factors that was just mentioned was wasted  
11 time in bringing attorneys up to speed. The reality that we  
12 dealt with is that we have been informed that we must reduce  
13 spending, and that there will be budget cuts. That is going to  
14 result for us in layoffs. That's where our money is, in  
15 personnel.

16 So, whether it's layoffs, or whether it's transfers,  
17 there is going to be a dislocation in our cases. We are going  
18 to have similar problems. Attorneys may have to be brought up  
19 to speed.

20 One of our reasons, as I stated before, is that -- or  
21 I may not have -- this was all part of the consideration.  
22 Dislocation is going to occur.

23 And I know that if I was in Los Angeles, I don't  
24 think that I would see a difference between a layoff and a  
25 transfer, because I would say it's all the same to me.

26 But there's got to be, somehow, when you can look at  
27 it from a different perspective, there are going to be people  
28







1 around this state that aren't going to have jobs soon. They're  
2 going to be actually completely out of work. With 60 days'  
3 notice, they're going to be gone.

4 And while I know how this -- I mean, emotionally, and  
5 physically, and the ties to whichever office it was -- Los  
6 Angeles, San Francisco, or Sacramento -- are there. There is an  
7 opportunity to transfer. There is an opportunity to keep your  
8 job.

9 The travel was mentioned. The -- we have -- right  
10 now, the majority of cases in our San Francisco office are  
11 Southern California cases. That is -- that hasn't been a  
12 problem or that much of a factor.

13 It's true that -- well, in terms of doing  
14 investigations, our investigators travel all over, and we -- we  
15 weighed that, we looked at that.

16 As far as the affirmative action hiring goals, there  
17 is -- and I don't think this is being said -- but there is no  
18 way that any decision here was made on the basis of any type of  
19 discriminatory action. I -- in my life, in my career, I never  
20 have, nor would I do that.

21 CHAIRMAN ROBERTI: I don't think he was inferring  
22 that. I think he was saying the L.A. office was further along.

23 MS. LAETHEM: But the -- part of this is, you know,  
24 and maybe it is pragmatic, but if they transfer, if people  
25 transfer, the people will transfer to the other office and will  
26 maintain that.

27 It's not anything that we -- that we desire to  
28



1 happen. Transfers can help that.

2       The prematurity is something that has been brought  
3 up. This decision isn't premature. Every -- we have been told  
4 and directed that our budget is going to be cut. That starts --  
5 the end of this fiscal year is June 30, and on July 1, we start  
6 going into next year's money.

7       Agencies that delay making these decisions, I  
8 believe, in the long run are hurting their staff and hurting  
9 themselves, because when the cuts come, they're going to be  
10 taking these cuts out of less money, not the full budget money  
11 because they'll have been spending it.

12       And the other part of it that I think is very  
13 important is that there are going to be people looking for jobs  
14 in this state because they've been laid off. And those jobs  
15 that are available, either as special fund agencies or whatever,  
16 are going to disappear. And the people that are looking now,  
17 and not the ones that are looking later, are the ones that are  
18 going to get those jobs.

19       It's only premature if we sit here, and I put my head  
20 into the sand, and I say, "It's not going to happen." We didn't  
21 do that. We have been looking at layoffs. We have had  
22 seniority lists prepared. We have been looking at this problem  
23 for a long, long time because I believed it was the only  
24 responsible way to handle it.

25       The early retirement incentives, the information has  
26 gone out. Our indication is, because they were due back the  
27 23rd, that there might be one or two people: one support staff  
28



1 member, and possibly one other person that might be interested  
2 in it. It's not going to impact on us.

3 This decision is one that I believe has to be made.  
4 I also believe that putting it off, or putting -- putting off my  
5 confirmation in order to discuss this decision -- don't -- it  
6 doesn't necessarily go together.

7 I'm here before you for you to assess whether I'm  
8 qualified. Obviously, in looking at what I've done, you've got  
9 to assess: am I a qualified person; are these decisions  
10 correct; did I base them on rational factors; did we consider  
11 everything.

12 But I believe that uncertainty and the disruption  
13 that it can cause is, in the long-run, going to hurt the agency.  
14 It's going to hurt the clients.

15 I understand, and I really do understand what they're  
16 saying in asking us to consider it. And -- and we have  
17 considered these factors, every one of them.

18 And I wish that I could sit here and say, you know,  
19 there is a better solution, that we believe there's a better  
20 solution; that layoffs are the answer, or that waiting is the  
21 answer.

22 We don't. I believe the decision is the correct one.

23 CHAIRMAN ROBERTI: Thank you.

24 Please identify yourself.

25 MR. PANTON: Yes.

26 Mr. Chairman and Committee Members, my name is Adrian  
27 Panton. I'm the managing attorney in the Los Angeles office. I  
28





1 would -- and I'm a 15-year member of that office.

2 I would like to just direct a few comments to the  
3 basic theme which Ms. Laethem has advanced for cutting the  
4 office. The quote, and I'm quoting, I believe, the words that  
5 she used, that eliminating Los Angeles is a long-term solution  
6 to haphazard budget cuts, that, of course, means that this is --  
7 this decision is based on fiscal considerations.

8 I would like to point out to the Committee that the  
9 Los Angeles office is the last office that anyone would ever  
10 eliminate for the purpose of fiscal -- to incur any fiscal  
11 savings.

12 Sixty percent of the death penalty cases come out of  
13 the Southern California area. The majority of them come out of  
14 the Los Angeles County and adjacent county areas. I would  
15 venture to guess that approximately 70 percent of our death  
16 penalty caseload is from the Southern California area.

17 The importance of this in terms of fiscal  
18 considerations is simply this. These cases are very complex and  
19 very time consuming. A lot of background investigation has gone  
20 into the families of the defendants, as well as into the crime,  
21 the crime scene. Most of the family members are in the Southern  
22 California area.

23 When we do get evidentiary hearings, they are  
24 conducted in the trial court where the person -- where the death  
25 judgment had been imposed, which means that these hearings are  
26 in the Southern California area.

27 Now, if you eliminate an office from the region where  
28



1 most of these death penalty cases are drawn, you are really  
2 creating an enormous expense when it comes to investigating  
3 these cases as well as conducting hearings.

4 Let me get to the issue of conducting hearings. We  
5 have two large hearings right now that are -- may or may not got  
6 before this office is scheduled to close in the Southern  
7 California area. One is in Riverside -- I'm sorry, San  
8 Bernardino County; one is in Los Angeles County.

9 The one in Los Angeles County is an enormous hearing.  
10 It is going to be a three to six week hearing. Several  
11 witnesses are from the Los Angeles area.

12 The absence of an office in that area, where you have  
13 the support staff, other attorneys to assist -- to assist you,  
14 is going to result in the agency having to hire temporary help,  
15 hire temporary facilities, where the attorneys can do work, you  
16 know, after the hearing.

17 And this is not just going to happen on one case.  
18 There are several other cases that -- where this, you know, this  
19 can occur.

20 When you just look at the pure figures on that, it  
21 just comes to be an enormous expense. You -- it's almost  
22 impossible to put a figure on it, but anyone can see that where  
23 70 percent of your cases are in that area, that you are really  
24 setting yourself up for an enormous cost overrun by closing an  
25 office where 70 percent of our caseload, and 60 percent of all  
26 death penalty cases, you know, come.

27 Just one other items in terms of the cost of  
28



1 operating the Los Angeles office, I'd like to bring to your  
2 attention the difference in just rental between the three  
3 offices. The rental for Los Angeles is \$190,000; for San  
4 Francisco it's \$460,700; for Sacramento it's \$372,400-something  
5 dollars.

6  
7 There is just no cost savings. We are the only one  
8 of the three offices that is actually located in a state  
9 building. In five years, when the building in which we are  
10 located is scheduled to be destroyed, we will be moving into  
11 another state facility.

12 The other two offices are private commercial  
13 buildings. There would never be a cost -- Los Angeles will  
14 always have a cost savings.

15 So, I think -- and I am just addressing the fiscal  
16 considerations, if you -- from a simply fiscal standpoint, which  
17 is the reason Ms. Laethem has advanced for eliminating the  
18 office, the move -- I mean, the closure of this office just  
19 simply doesn't make any sense.

20 CHAIRMAN ROBERTI: Thank you very much.

21 Senator Mello.

22 SENATOR MELLO: I think the closing of the L.A.  
23 office, I would defer to Senator Roberti and others that are  
24 down in that area, and they know about that.

25 But in looking over the research done by the Senate  
26 Office of Research, you said that 70 percent of these cases are  
27 drawn from the L.A. area. But aren't these mostly capital  
28 punishment, capital cases?







1 MR. PANTON: They -- they all are capital. Yes, they  
2 all are capital cases.

3 SENATOR MELLO: Aren't most of these residents of San  
4 Quentin?

5 MR. PANTON: Yes. All of the -- let me explain the  
6 process.

7 San Quentin houses all of the Death Row -- male Death  
8 Row inmates. That is not where the problem comes in. Traveling  
9 to San Francisco to see your client, we don't see our clients  
10 every day. It's not necessary to see them. You know, we see  
11 them once or twice a month, or sometimes even less -- less  
12 frequently.

13 The cost comes in in working up the case. The case  
14 is worked up in the county where they had -- where the death  
15 judgment was imposed. That is the point that I am making.

16 In other words, 16 of the 18 cases in the Los Angeles  
17 office were cases that were tried in the Southern California  
18 area. Those cases are all being investigated down out of our  
19 office. That's the point that I'm, you know, that I'm making.

20 There isn't anything to do in San Quentin --

21 SENATOR MELLO: Wasn't the Public Defender's Office  
22 involved in the investigation?

23 MR. PANTON: Yes, we do.

24 SENATOR MELLO: So, defenders are investigating these  
25 cases?

26 MR. PANTON: Yes.

27 SENATOR MELLO: Because it also states here that the  
28



1 percentage of the inmates that come from the Los Angeles area,  
2 most of the males are located at San Quentin. It also points  
3 out that the San Francisco office at this time is handling the  
4 majority of these Southern California caseloads.

5 MR. PANTON: That's not true.

6 SENATOR MELLO: Well, then, our staff did some lousy  
7 research.

8 MS. LAETHEM: If I might, I think what they meant to  
9 say was that within the San Francisco office, the majority if  
10 their cases are Southern California cases.

11 SENATOR MELLO: Let me read you the sentence. It  
12 says:

13 "Most cases are from Southern  
14 California."

15 That's the allegation.

16 "Although Southern California  
17 inmates comprise the bulk of capital  
18 cases, all the inmates are located  
19 in Northern California at San  
20 Quentin. In addition, at this time,  
21 San Francisco handles the majority  
22 of the Southern California  
23 caseload."

24 MR. PANTON: Senator, maybe one thing I can point  
25 out, there are attorneys in San Francisco that are working on  
26 cases out of Southern California. And again, it's a reason to  
27 keep the Southern California office open, because the support  
28



1 staff and the attorneys in the L.A. area can help out on  
2 providing those investigations.

3 If that office is closed, then that resource is not  
4 available any more to the attorneys up in Northern California.

5 SENATOR MELLO: So, is that incorrect, then?

6 It would seem to me that if you have an office --  
7 personally, when I looked geographically, I wondered first of  
8 all why you're closing L.A. It seemed like closing Sacramento  
9 or San Francisco would allow a better balance. But then, if you  
10 look at the caseload -- but this statement does say, and it  
11 seems possible and/or feasible that the San Francisco office  
12 that's right there adjacent to San Quentin could have and  
13 process these caseloads and work them up to the point where  
14 they're ready for whatever procedures are to take place.

15 MR. PANTON: There are two incorrect things.

16 One, no, the -- San Francisco does not -- simply does  
17 not handle -- that is an incorrect statement. They do not  
18 handle most of the cases out of Southern California in our -- in  
19 our agency.

20 SENATOR MELLO: That are located in San Quentin?

21 You see, here you have the inmate located in San  
22 Quentin, and their cases are subject to appeal, or whatever the  
23 procedure might be --

24 MR. PANTON: They could be located in Podunk,  
25 Mississippi. It doesn't really matter.

26 Their cases occurred, and the crimes occurred, in  
27 Southern California. That is -- that is where the real issue  
28





1 is, and that is why it is so important --

2 CHAIRMAN ROBERTI: Where the investigation has to  
3 take place.

4 MR. PANTON: Yes, right, because that's where the  
5 costs, you know, comes in. It doesn't really mater where the  
6 client is.

7 SENATOR MELLO: Okay.

8 MS. LAETHEM: If I --

9 CHAIRMAN ROBERTI: Ms. Laethem.

10 MS. LAETHEM: Thank you.

11 If I might, the -- the fact that the cases come out  
12 of the -- or the majority of the cases come out of Southern  
13 California is very correct.

14 However, the investigation of these cases are, for  
15 the most part, handled by investigators throughout the state.  
16 Experts that we hire for these cases come from all over the  
17 state. We have -- there are very few experts that are in this  
18 field. We taken them where we can get them.

19 Additionally, simply because the case is from  
20 Southern California doesn't mean that there aren't costs. The  
21 case that Mr. Panton referred to in San Bernardino County, yes,  
22 that's a Los Angeles case, but in that case we have had to hire  
23 local counsel, and make arrangements for local offices because  
24 of the distance involved. That doesn't -- that hasn't changed.  
25 That's a Los Angeles case, and the expenses are still there.

26 Investigating and conducting the hearings, and  
27 talking to family members, family members aren't talked to on a  
28



1 daily basis. There may be one in-person interview. Most of it  
2 is done by phone.

3 We've had no major, in any way, added expense by  
4 having our San Francisco office handle these Southern California  
5 cases.

6 CHAIRMAN ROBERTI: I hate to second-guess any agency  
7 head -- that's not our function -- as to decisions you make.  
8 You know, as you're trying, you have to live within economies,  
9 and you have to make some very tough decisions, as all agency  
10 heads have to.

11 If I were making the decision myself, and I'm not the  
12 Public Defender, frankly, I think it makes sense to have one  
13 north and one south office. It's just because of the size of  
14 the state.

15 Therefore, I mean, I have to say I don't agree with  
16 your decision, but that's not my point. The point is whether it  
17 was a rational decision based on, you know, information that you  
18 had before us, and I guess it is defensible. Although, Southern  
19 California is an awfully large area not to have an office there  
20 just for investigative purposes, and to have two in the north  
21 strikes me as odd.

22 MS. LAETHEM: Ideally -- ideally, if we were setting  
23 up this agency today, right now, and you said, "Set up an office  
24 that provides representation to capital inmates," all we'd have  
25 to do, and what we would need to do is set up one office.

26 This agency was originally set up to handle Court of  
27 Appeal cases throughout the entire State of California. And all  
28



1 we would need is one.

2 Now, I'm not saying that that is our plan, that we  
3 are, you know, in a few years we have to plan to -- to close it  
4 and only have one office.

5 In fact, a few years from now, we might find that two  
6 offices 85 miles apart are just as effective as one.

7 It is a mischaracterization to say that this was done  
8 simply for budget reasons. The budget drove us to look at our  
9 operations, but we believe that we can maximize our resources,  
10 we can provide more effective training, we can provide more  
11 effective supervision, and in fact what we can provide -- and it  
12 is so unfortunate that what's driven us to this is this terrible  
13 situation that the State of California finds itself in -- but  
14 that out of this will come a agency -- and we hope that  
15 everybody in Los Angeles that can will transfer and be a part of  
16 this -- but out of this is going to come an agency that is going  
17 to take up responsibility and the burden of the representation  
18 of as many capital inmates as possible.

19 Because if we're not, the Court is going to have no  
20 choice but to start finding private attorneys who may not be  
21 qualified. We have 86 people on Death Row without lawyers now.  
22 This -- we are not playing for the short-term solution here.  
23 And we analyzed every factor in coming to this decision.

24 We believe that in the long-term, this is what's  
25 going to give our clients and the state what they need. This  
26 isn't to say that we didn't balance our employees and our  
27 clients.  
28







1           And I realize exactly what you said. You, sitting  
2 there, have every right not -- not to agree with my decision.

3           I do stand behind it.

4           But know that this is being done, bottom line, for  
5 our clients and our future clients.

6           CHAIRMAN ROBERTI: Next witness, yes.

7           MS. POWELL: Thank you, Mr. Chairman.

8           My name is Therene Powell. I'm a senior Deputy State  
9 Public Defender in Los Angeles. I joined the Los Angeles office  
10 in October of 1976, and I am the longest term attorney staff  
11 member statewide within the office.

12           I think Mr. Panton has given you a good summary of  
13 the fiscal costs.

14           I have been thinking about this decision since it was  
15 suddenly announced to us. I don't believe that it makes any  
16 sense at all from a fiscal perspective, a legal perspective, or  
17 a humanitarian perspective.

18           Most decisions that you confront here in the  
19 Legislature involve tradeoffs. You can't get everything you  
20 want. Something has to suffer for something else.

21           This is a decision of almost stunning stupidity that  
22 manages to maximize none of the legitimate concerns of our  
23 agency.

24           If the rent figures that Mr. Panton stated to you  
25 were not sufficient in themselves to make someone wonder why the  
26 most economically sound office in the area where most of the  
27 cases arise is the one slated for closure, I'd like to talk to  
28



1 you about the legal consequences.

2 I am one of the counsel in one of the habeas corpus  
3 cases that Mr. Panton mentioned, the one that's in Los Angeles  
4 County. And it is -- we are anticipating a very lengthy and  
5 complicated evidentiary hearing.

6 In some ways, my case is very different from most of  
7 the ones which will arise in Los Angeles. Although my client  
8 was convicted in Los Angeles County, he spent most of his  
9 childhood and young adulthood out of the state. So, a lot of  
10 the background investigation in that case, unlike most of the  
11 others, does not have to be done in Los Angeles.

12 It's true, I can make a phone call to Alabama or  
13 Florida as easily from San Francisco or Sacramento as I can from  
14 Los Angeles. In that sense, you might say this is not a  
15 geographically-based case.

16 Yet I am -- and I can assure you, that this is what I  
17 am doing when I go into the office each day -- actively engaged  
18 in the preparation of that case. And the advantages of being in  
19 Los Angeles County are immense. We are looking at court files.  
20 We are talking to some witnesses in Los Angeles. We are dealing  
21 with the Attorney General's Office and the District Attorney's  
22 Office in Los Angeles on usually a weekly if not multi-weekly  
23 basis. And these are not things that can all be done by letters  
24 and phone calls. Or, if they could be, they would take three  
25 days or four days to complete, instead of a half hour.

26 And if that is a cost saving in attorney time, then  
27 I'm -- my mathematics is -- is completely off.



1                   And I want to emphasize that case to you, because as  
2 I said, it is unusual. It is unusual -- that would be a case  
3 that someone might hold up and say, "Look, geography doesn't  
4 matter so much. Look at this case. Look at all the out-of-  
5 state work. That could be done from anywhere."

6                   That wouldn't be fair, because it would be such an  
7 unusual case. But that would be a case I might pick if I were  
8 trying to make the case that geography didn't matter

9                   And yet, I can assure you that being in Los Angeles  
10 does matter. It matters immensely.

11                  SENATOR PETRIS: Question, Mr. Chairman.

12                  CHAIRMAN ROBERTI: Senator Petris.

13                  SENATOR PETRIS: On that case, I don't understand  
14 evidentiary proceeding.

15                  Isn't this an appellate situation? Or was it  
16 remanded back for trial, or what?

17                  MS. POWELL: This is a habeas corpus case which --

18                  SENATOR PETRIS: Oh, I see.

19                  MS. POWELL: -- was filed in conjunction with the  
20 appeal. We've received an Order to Show Cause from the  
21 California Supreme Court, which represents their determination  
22 that we established a prima facie case, but now we have to have  
23 a hearing to see if we can actually prove up the allegations  
24 that they were relying on when they made that determination.

25                  SENATOR PETRIS: Which level is that, the appellate?

26                  MS. POWELL: The -- there's a referee who is a judge  
27 of the Los Angeles County Superior Court.  
28







1           SENATOR PETRIS: He's appointed by the Appellate  
2 Court?

3           MS. POWELL: But she's actually appointed by the  
4 Supreme Court and is working for them. She's not really working  
5 as an L.A. Superior Court Judge at this point.

6           SENATOR PETRIS: She's a referee.

7           MS. POWELL: Right.

8           SENATOR PETRIS: So you have what amounts to a trial  
9 on that issue?

10          MS. POWELL: Exactly.

11          What I wanted to speak to you primarily was the legal  
12 considerations and the question of experience.

13          We've heard that there are going to have to be  
14 layoffs, that there -- it's an unfortunate fact of life,  
15 affecting all state agencies. It doesn't matter where the cuts  
16 come. It's just a matter of numbers.

17          What's wrong with closing Los Angeles if there will  
18 have to be cuts anyway? I'd like to tell you what's wrong with  
19 that.

20          Los Angeles has the highest percentage of experienced  
21 attorneys, and attorneys experienced in capital work. We are  
22 not fungible with attorneys one or two years out of law school,  
23 like they have in Sacramento.

24          I was an attorney with seven years' experience, and  
25 yes, like Ms. Laethem said, I think I was pretty good. But I  
26 sure wasn't as good as I am now.

27          If you cut proportionately, because of the seniority  
28



1 system, you will be cutting from each of the three offices the  
2 least experienced attorneys. You will be cutting in some cases  
3 attorneys who have no capital cases, so they don't create any  
4 disruption in that area.

5 In most other cases, you will be cutting attorneys  
6 who have only one capital case, and if they have that one,  
7 they've been very recently assigned to it. So, they haven't  
8 spent a lot of work on it. They don't -- somebody else can come  
9 in, take over that case, and try to get up to speed on it.

10 I've spent three or four years on each of my cases.  
11 There are things that I could talk until next December, and I  
12 could not convey, try as I might, to someone else who hasn't  
13 lived with the case through its permutations, as I have, what is  
14 going on in that case. Handing it over to an already fully  
15 engaged senior attorney, or even worse, to an attorney with two  
16 or three years' experience, is not going to be something to  
17 promote effective legal representation.

18 We have fine people in our offices, in all of the  
19 offices; fine new people. And I hate the thought that the  
20 budget situation may mean that they have to leave.

21 But they are not as vital to our mission as the  
22 experienced attorneys who have cases ongoing that they have  
23 already spent a tremendous amount time on.

24 The idea that Sacramento or San Francisco has seven  
25 brand-new cases, that's a reason, you know, why it will be -- it  
26 would be easier to reassign those cases, not the way it's being  
27 analyzed by our Director.  
28



1 I'm also the coordinator of training for the Los  
2 Angeles office. And we have done -- you heard about the  
3 training program for new attorneys, and I think that's a good  
4 idea. But we have no training for experienced attorneys within  
5 the office. I don't think that's our administration's fault. I  
6 think that's -- that's simply a matter of budget and time  
7 constraints, where it has not yet been possible.

8 But nevertheless, that's the unfortunate fact of  
9 life. The only training senior attorneys get is when the office  
10 can afford to send a few of us to some outside seminar.

11 We train each other. We learn on the job. That's  
12 the reality for people past their first month of this marvelous  
13 formal training course you heard about, and that makes  
14 experience all the more crucial.

15 Yes, there are budget cuts, but what has been  
16 proposed here is a cut that will cut more in terms of numbers  
17 that the most pessimistic budget figures require. And it will  
18 cut to a large extent the attorneys who are -- the office is  
19 least able to lose.

20 I think you should look at those facts and that  
21 reality.

22 We are willing to do what we can for belt-tightening  
23 and budget cutting. If you come to the Los Angeles office in  
24 the old State Building, and look where I work, you can see that  
25 I am not someone who is looking for luxuries and perks. Compare  
26 Los Angeles to San Francisco or Sacramento. You'll see that the  
27 people in Los Angeles are willing to work in an economical  
28





1 system. We've been doing that for 16 years, and we're willing  
2 to do whatever else we can, because we want to minimize -- I'm  
3 not here saying, "Don't -- don't close my office. Close San  
4 Francisco or Sacramento."

5 We're willing to do anything we can to keep all of  
6 the offices open.

7 But if there's -- it's not a tough decision to close  
8 Los Angeles. It's an absolutely irrational one. And I think,  
9 looked at from every single perspective, that has to be the  
10 conclusion.

11 Thank you very much.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Are there any questions?

14 Now questions, we appreciate your testimony.

15 MS. POWELL: Thank you very much, Mr. Chairman.

16 CHAIRMAN ROBERTI: Is there anybody else here to  
17 testify?

18 I don't see anyone, so Senator Petris.

19 SENATOR PETRIS: Yes, I had a couple questions.

20 One is on the comments of the last witness about the  
21 other option of reducing the size of each one, rather than  
22 eliminating any one.

23 The second question is on, in your early comments,  
24 you said something about the mission of the office having been  
25 changed, but I didn't understand who changed it and why. Was it  
26 a budget matter? Was it a statutory change? Was it a Supreme  
27 Court decision? Is that what took you out of the federal  
28



1 courts?

2 MS. LAETHEM: All --

3 SENATOR PETRIS: All of the above?

4 MS. LAETHEM: No. There's two or three questions  
5 mixed in there.

6 When the office was first started, it was started to  
7 provide representation in District Court of Appeal cases  
8 throughout the state. There were offices in San Diego,  
9 Sacramento, San Francisco and Los Angeles.

10 When the budget was cut in 1982, the San Diego office  
11 was eliminated at that point, and a lot of the people,  
12 obviously, have left the agency through layoffs, and there was  
13 attrition.

14 And as the death penalty cases started really  
15 becoming more prominent, and becoming more plentiful, it became  
16 -- let me explain one thing -- and when they cut the budget of  
17 this office at the same time the new system was set up, which  
18 were appellate projects throughout the state, and these  
19 appellate projects started handling the Court of Appeal  
20 representation with private lawyers.

21 There was one appellate project in -- based in San  
22 Francisco, and their mission was to do some direct  
23 representation for death penalty cases, but also to recruit  
24 private attorneys to do death penalty cases; take up what this  
25 agency was no longer able to do.

26 It became clear very shortly that there were a wealth  
27 of attorneys to do Court of Appeal cases. The pay was okay; the  
28



1 cases were not complex, and they were able to find lawyers.

2 But as time went on, it became increasingly clear  
3 that we weren't finding attorneys to do the death penalty cases.  
4 I think I said when I came in, I think there were 25  
5 unrepresented people on Death Row. Now there are 86, and the  
6 cases are coming in at the rate of 40 a year.

7 And so, when I was appointed, the Administration --  
8 and the Little Hoover Commission had been talking about this --  
9 but what they did was, they said, "Focus on death penalty cases.  
10 We've got plenty of lawyers in the state to do Court of Appeal  
11 cases. This agency needs to take over and do death penalty  
12 cases in the State of California."

13 Now, just before I was appointed, there also had been  
14 a meeting with the Supreme Court, and the head of this office at  
15 the time, members of the federal bar. And at that time, a  
16 decision was made that in order to provide continuity of  
17 representation, anyone taking a case on direct appeal in the  
18 State of California had to agree that they would take the case  
19 on into federal court.

20 When I came in, it became very clear to me that that  
21 was going to be a problem for us. Number one, we were taking  
22 appellate attorneys -- and those were their skills as appellate  
23 lawyers -- and we were saying, "Now you're going to go do  
24 litigation."

25 Number two, we were losing experienced attorneys into  
26 the realm of federal court, never to be seen again.

27 I wanted at the very least to get paid for this work.  
28





1 Anyone on the private level that was doing a federal case got  
2 paid by the federal government. And it was my feeling that if  
3 we had to do this, at least we should get paid.

4 The payments -- bills have been sent in. The  
5 payments were sporadic. The State of California has not in fact  
6 been reimbursed. In one case, we got a bill back that said  
7 rejected; in others, we've gotten paid.

8 Well, at the same time that we were experiencing  
9 these problems, the California Appellate Project was recruiting  
10 attorneys to do cases and were experiencing the same problem.  
11 There were people that said, "Maybe I'd be willing to get into a  
12 case on direct appeal, but I don't want to be tied up for the  
13 next ten years in federal court."

14 I had meetings with the Supreme Court. I met with  
15 CAP; this was an ongoing thing. What we finally did as an  
16 agency was that we simply started not going into federal court.  
17 Right now, I think, we have five cases in federal court, and we  
18 haven't gone in, and we don't intend to go in on any more.

19 And then very recently, and I really -- I don't  
20 believe this has been announced as a policy yet, but I don't  
21 believe it's secret, because I wasn't told it was secret, but  
22 the Chief Justice -- well, on June 1st, the Supreme Court took  
23 over the appointment and recruitment process. They took it away  
24 from CAP, and now they're going to try and recruit attorneys.

25 They have made the decision -- and I don't, as I  
26 said, believe it's a secret; although it may not yet be  
27 announced -- that they are no longer going to require the  
28



1 attorneys that they're appointing to go into federal court for  
2 the same reason: they can't get the attorneys that are willing  
3 to take on that burden.

4 So, that is -- I think that was one of your questions  
5 about how we got to federal court and where we got there.

6 SENATOR PETRIS: Let me ask you there, how does that  
7 square with trying to carry out your mission?

8 If you have a case, a capital offense, and you know  
9 there's a good chance of making some progress by jumping into  
10 federal court, that avenue's been cut off.

11 MS. LAETHEM: The -- I believe that the mission of  
12 our agency is to represent people in the State of California at  
13 the state level.

14 There are attorneys who are very qualified to go into  
15 federal court. Federal court requires a great deal of  
16 litigation. The attorneys in my office, with all due respect,  
17 they are -- they are experienced. Ms. Powell is one of those  
18 experienced attorneys -- but they're not litigators.

19 And in the case that she mentioned that she's working  
20 on, we have had to hire an outside litigator to handle the  
21 evidentiary parts of this hearing.

22 This is an agency that wasn't set up to do  
23 litigation. It wasn't trained. And the drain on our resources  
24 to do this would be tremendous.

25 The fact of the matter is that we, due to the current  
26 philosophy of the California Supreme Court, we don't feel it is  
27 likely that we are going to get a great number of evidentiary  
28



1 hearings at -- at the state level.

2 CHAIRMAN ROBERTI: Ms. Laethem, I'm going to  
3 interrupt in order to break for five minutes.

4 MS. LAETHEM: I'm done.

5 SENATOR PETRIS: I'm not.

6 CHAIRMAN ROBERTI: We are breaking for five minutes.

7 [Thereupon a brief recess was taken.]

8 CHAIRMAN ROBERTI: The Committee will come to order.

9 Senator Petris was asking questions.

10 SENATOR PETRIS: I'm being importuned to go to a  
11 State Allocation Board meeting at 4:00, so, Mr. Chairman, I'll  
12 be very brief and ask that I be excused.

13 CHAIRMAN ROBERTI: Very good.

14 SENATOR PETRIS: We were talking about the change of  
15 mission.

16 MS. LAETHEM: Yes, sir.

17 SENATOR PETRIS: And the abandonment of participation  
18 above the state level into the federal.

19 Isn't that a subversion of a lawyer's duty in a  
20 capital case?

21 MS. LAETHEM: No, I don't think it is.

22 The requirement that the lawyer go into federal court  
23 was something that was set up and decided as a result of this  
24 meeting for purposes of providing continuity of counsel, which  
25 ideally, is the way it should be.

26 However, what experience proved to all of us was that  
27 in fact there was no continuity of counsel. We were trying to  
28







1 avoid having to get new attorneys to come in to re-learn the  
2 cases and re-read the record. The fact was that the cases were  
3 outlasting the attorneys, and that we were unable to get  
4 attorneys who were willing to take on this responsibility,  
5 making the shift from state to federal court.

6 SENATOR PETRIS: You mean within your own shop, or  
7 from outside?

8 MS. LAETHEM: Both in and -- well, outside, we were  
9 unable to get them. Within the shop, it was very difficult to  
10 take what had been a state appellate agency and try and turn  
11 them into litigators or federal litigators.

12 SENATOR PETRIS: Didn't they do that for years in the  
13 past?

14 It seems to me in past years, the controversy was, do  
15 we have a duty to take it further, not do we have the funds, or  
16 do we have enough people, or will there be continuity.

17 MS. LAETHEM: What was actually happening in past  
18 years under a different Court is that we weren't getting to that  
19 decision because the cases were -- we were winning. The cases  
20 were being reversed.

21 It's just that when the cases started being affirmed  
22 that we were faced with this next step, the next responsibility.

23 The other thing that we did find, and I have been a  
24 member of the Eastern District Recruiting Committee since before  
25 I was appointed to this position, is that while it is difficult  
26 to recruit, it was somewhat easier to recruit either for the  
27 federal level or for the state level. There were firms and  
28



1 private attorneys who were experienced in federal court, and  
2 were willing to come in at the federal level. But on the other  
3 hand, they didn't want to deal with a direct appeal, and the  
4 reverse -- the reverse was true.

5 And so, as long as there is competent, qualified  
6 counsel to take over the case, no, I don't feel it would be --

7 SENATOR PETRIS: Well, apparently there isn't. I  
8 think you said there are 86 on Death Row that have no counsel?

9 MS. LAETHEM: Waiting direct appeal at the present  
10 time, yes.

11 SENATOR PETRIS: What happens to them?

12 MS. LAETHEM: We are -- courts, through their  
13 recruitment process, CAP in the past through theirs, all of us  
14 that are involved at the private level have been trying to  
15 recruit attorneys.

16 What we want to do is to be the agency that the state  
17 expected us to be, hoped we would be, and that is that we will  
18 eventually be able to take on the representation of the majority  
19 of these cases on direct appeal.

20 SENATOR PETRIS: When?

21 MS. LAETHEM: I believe that within the next two to  
22 three years, you will see changes in our ability to take on  
23 increased numbers of new cases. I believe that within the next  
24 five to six years, if this agency -- if I'm right, and this  
25 agency is functioning with our vision of the way we want it to,  
26 with skilled, trained lawyers, the same lawyers, the same types  
27 of lawyers we have now but in a position where we have  
28



1 maximized our resources, maximized our training budget,  
2 maximized the supervision that's necessary, we'll do it.  
3

4 One of the things -- can I just --

5 SENATOR PETRIS: How are you going to do it if  
6 they're increasing at the rate of 40 a year, and you're not  
7 increasing personnel?

8 Are you predicting the end of the recession in six  
9 years?

10 MS. LAETHEM: No, I am not.

11 What I am predicting is that our agency will be in a  
12 position where the Court will be seeing -- there is money out  
13 there for this representation. The Court has part of it; we  
14 have part of it. But where we will be in a position to say,  
15 "Look, we can provide the representation," and they will be  
16 more than happy enough, since they're having trouble getting  
17 private attorneys, because they see that as a short-term  
18 solution anyway, to doing it.

19 May I say --

20 SENATOR PETRIS: Those fees are set by statute,  
21 aren't they?

22 MS. LAETHEM: To pay the private attorneys?

23 SENATOR PETRIS: Yes. They're very low right now.

24 MS. LAETHEM: It's \$75 an hour.

25 SENATOR PETRIS: Yeah, I carried that 12 years ago.

26 MS. LAETHEM: Yeah.

27 SENATOR PETRIS: And it's still at \$75 an hour.  
28 That's one reason you can't get attorneys --







1 MS. LAETHEM: That's --

2 SENATOR PETRIS: -- on the outside; isn't it?

3 MS. LAETHEM: That's one of the reasons.

4 Another reason is that there -- a lot of attorneys  
5 don't want to do capital work.

6 If I might, because something you said keyed  
7 something in me, what we have found, using, for example, our  
8 Sacramento office, is that these attorneys that have been put  
9 through this training program, and are coming on board and doing  
10 capital work sooner, are effective. They are providing capital  
11 representation in a way that was never done before in this  
12 agency.

13 It was controversial. There were people that -- that  
14 felt that you needed to have been practicing at the Court of  
15 Appeal level for four or five or more years, until you could come  
16 on to a death case.

17 And we've proven that with supervision and with  
18 training, these attorneys are providing competent, effective  
19 representation. And if we can maximize these resources, and  
20 continue this program, and get the -- and have the limited  
21 supervision we have spread out, spread out between the two  
22 offices we're talking about, we think that we can turn into the  
23 kind of agency that will be able to take these cases

24 We've proven it in Sacramento, and we've proven it  
25 with our training program. There's no substitute, experience is  
26 very important.

27 SENATOR PETRIS: Sacramento has 18 cases.  
28



1 MS. LAETHEM: Sacramento has 13 cases right now; 7 of  
2 them new cases and --

3 SENATOR PETRIS: That's not a very big dent in the  
4 86, it seems to me.

5 MS. LAETHEM: Sacramento --

6 SENATOR PETRIS: How are you going to make the dent  
7 without any additional people?

8 MS. LAETHEM: We're -- we're going to have a problem  
9 whichever way we go. We are losing people. But that's going to  
10 happen. The budget cuts are going to do that.

11 And what we wanted to do was find a way to say,  
12 "Look, we're losing people. We can lose the haphazardly. We  
13 can cut a few here, a few there. We can reassign cases. We can  
14 become dislocated. Or, we can sit down and try and make some  
15 hard decisions about where the downside is going to be  
16 short-term, and what we can achieve long-term."

17 I think that we are going to be in that place. I  
18 think we are going to get part of this money that -- that is  
19 available out there for private counsel, because we're going to  
20 take this situation, and from this adversity, we're going to  
21 build a strong agency.

22 My only, only goal, the only thing that -- that I  
23 want for this agency is to provide the kind of representation  
24 that should be provided to the people we represent now and to  
25 the future clients.

26 SENATOR PETRIS: In terms of percentage, how much was  
27 your budget cut last year?  
28



1 MS. LAETHEM: Sixteen percent, approximately.

2 SENATOR PETRIS: And for the coming year?

3 MS. LAETHEM: We are anticipating and have been told  
4 to anticipate 20 percent.

5 SENATOR PETRIS: Another 20 on top of the 16.

6 CHAIRMAN ROBERTI: Any other questions?

7 Well, I intend to vote myself to put your  
8 confirmation on the Floor.

9 What we normally do then is, we wait a couple of  
10 weeks. Hopefully, in that period of time, maybe something can  
11 be done. If it can't be done, maybe you can make me understand  
12 it better.

13 I hate to use the confirmation process to second-  
14 guess the budget cuts of every agency. Otherwise, we will  
15 never, ever do anything else. And it's, frankly, not our  
16 purview, unless the decision, you know, is a tremendously grave  
17 error.

18 As I indicated, I frankly don't understand the  
19 closing of the L.A. office. I understand why you had to make a  
20 decision. I frankly don't understand the decision, because of  
21 the huge geographic area involved, the casework there, and the  
22 fact that there are two offices then in Northern California,  
23 which geographically doesn't seem to make much sense.

24 And also the case of the senior attorneys in Los  
25 Angeles, that I would hope that some time in the decision making  
26 process was spent as to their value, because I was impressed by  
27 the fact that that's where, apparently, the senior attorneys are  
28







1 in greater numbers.

2 But in weighing it all in my own mind, I don't know  
3 if I've reached the point where I want to delay the confirmation  
4 process because of a budget cut, even though I don't really  
5 agree with the cut.

6  
7 SENATOR PETRIS: Before I go, I have a comment to  
8 make. I often do when there's dissension in the ranks, and  
9 people come forward and criticize decisions.

10 I always ask the head of the agency to refrain from  
11 any retaliation. There are a lot of people who don't, but there  
12 are others who do. We get feedback later, and it's deplorable.

13 So, I will ask you --

14 MS. LAETHEM: I would not do that, and I will not do  
15 that.

16 SENATOR PETRIS: That's fine.

17 CHAIRMAN ROBERTI: Thank you.

18 I think Ms. Laethem started by saying that she  
19 probably would be doing the same thing if she were in the same  
20 position.

21 It was a very difficult decision, I'm sure, that she  
22 had to make.

23 Nevertheless, we do hold, as our tradition, we do  
24 hold the confirmation on the Floor.

25 The agency has been troubled in the past for reasons  
26 that I don't think have anything to do with Ms. Laethem, but  
27 there's a whole host of personnel questions that just absolutely  
28 plagued this agency for a number of years. I certainly don't



1 want to add to that.

2           On the other hand, I very much appreciate the points  
3 that have been raised by the people in opposition.

4           Senator Beverly.

5           SENATOR BEVERLY: Move we recommend approval of the  
6 nomination.

7           CHAIRMAN ROBERTI: Senator Beverly moves confirmation  
8 be approved.

9           Secretary, call the roll.

10          SECRETARY WEBB: Senator Beverly.

11          SENATOR BEVERLY: Aye.

12          SECRETARY WEBB: Beverly Aye.

13          Senator Mello.

14          SENATOR MELLO: Aye.

15          SECRETARY WEBB: Mello Aye.

16          Senator Petris. Senator Craven. Senator Roberti.

17          CHAIRMAN ROBERTI: Aye.

18          SECRETARY WEBB: Roberti Aye.

19          CHAIRMAN ROBERTI: We'll hold the roll open for  
20 Senator Petris. There's three votes.

21          MS. LAETHEM: Thank you.

22          CHAIRMAN ROBERTI: Without objection, we will place  
23 this nomination independent of the other ones today for vote.  
24 It's that important, so it'll be on its own.

25                       [Thereupon this portion of the  
26 Senate Rules Committee hearing  
27 was terminated at approximately  
28 4:03 P.M.]




CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26<sup>th</sup> day of June, 1992.

  
EVELYN J. MIZAK  
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR NICHOLAS PETRIS

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RONALD L. CEDILLOS, Member  
Trustees of the California State University

MARYANN MALONEY  
St. Francis Medical Center

BENJAMIN F. MONTOYA, Member  
State Board of Education

JOE STEIN, President  
State Board of Education

MELINDA MELENDEZ  
Association of California School Administrators

ROBERTO VELLANOWETH, Chair  
Republican National Hispanic Assembly

RALPH M. OCHOA, Member  
U.C. Board of Regents

BILL GARCIA, State Advisor  
American G. I. Forum  
American Mexican War Mothers



APPEARANCES (CONTINUED)

HANK WILSON  
Gay Lesbian Youth Advocates

KEN McPHERSON  
Forgotten Scouts

DONALD W. MURPHY, Director  
Department of Parks and Recreation

ROBERT HAM  
Off-road Vehicle Legislative Coalition

LYNN SADLER  
Planning and Conservation League

RICHARD A. WILSON, Director  
Department of Forestry and Fire Protection

DON JEFFERIES, Former Employee  
Department of Forestry and Fire Protection

DENNIS O'BRIEN, President  
California Department of Forestry Employees Association

JENNIFER JENNINGS  
Planning and Conservation League

JAMES HAMILTON  
California Trout



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JIM HAMILTON  
California Trout

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Motion to Confirm

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JIM HAMILTON  
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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Governor's appointments, we have four persons nominated by the Governor for various offices. First will be Ronald L. Cedillos, Member of the Board of Trustees of the Cal. State University.

Our procedure normally is to tell us why we should vote for your confirmation. What are your qualifications?

MR. CEDILLOS: Sure, Senator. Thank you for allowing me to be here.

I want to just kind of briefly describe my background, which is probably a little unconventional even by California standards. I was a former professional athlete for a number of years, a motion picture actor in the early to mid-'80s. I acquired a high-tech aerospace testing firm that I developed into a multi-million dollar company down in Southern California.

During the last twelve years, I've sat on at least most of the major philanthropic boards in -- in Southern California, some of the larger ones that create programs for primarily youth down in Southern California. I also sat on two university boards: Pepperdine University and California State University of -- California State University, Long Beach, Board of Governors.

I've been a guest lecturer at USC, and I've been -- have been invited, although I did not accept, the invitation to become an adjunct Associate Professor there as well.



1 Education, in my mind, is certainly held probably to  
2 the highest standard of responsibility and importance in this  
3 state. It's an issue that -- that I consider to be very  
4 important in the state as well, particularly given what the  
5 University system is facing today.

6 I think that I bring a unique perspective and a  
7 willingness, and, I think, ability to facilitate debate on  
8 problem-solving and developing consensus to develop or bring  
9 about the compliances that are needed for issues facing the  
10 system today.

11 SENATOR PETRIS: Let's see, you were a professional  
12 athlete from 1973 to 1980?

13 MR. CEDILLOS: That's correct.

14 SENATOR PETRIS: You were in motion pictures during  
15 the same period of time?

16 MR. CEDILLOS: That's correct.

17 SENATOR PETRIS: Did you consider running for  
18 Governor?

19 [Laughter.]

20 MR. CEDILLOS: I would be happy to be a Trustee.

21 [Laughter.]

22 SENATOR PETRIS: You could be making these  
23 appointments, you know.

24 Does any Member have a question?

25 Is there anyone in the audience that desires to  
26 testify, either in support or in opposition to this nomination?

27 MS. MALONEY: Hi, thank you.  
28



1 I'm Mary Maloney of St. Francis Medical Center in  
2 Linwood.

3 I'm here to ask for your confirmation of Ron Cedillos  
4 to the California State University Board of Trustees.

5 I have come to know Ron in my three-and-a-half years  
6 at St. Francis. He has been very supportive of our efforts  
7 there. He is well aware of health care issues and concerned  
8 about emergency departments being an available resource in Los  
9 Angeles County.

10 Most importantly, in working with Ron, I have learned  
11 that he is a leader in the community, respected by many in Los  
12 Angeles County, a team player. He knows how to analyze a  
13 problem and solve it.

14 Because of these and many other favorable attributes,  
15 I ask that you confirm Ron Cedillos to the California State  
16 University Board of Trustees.

17 Any questions?

18 SENATOR PETRIS: Thank you.

19 Any questions of the witness? I guess not.

20 MS. MALONEY: Thank you.

21 SENATOR PETRIS: Any other witnesses either for or  
22 against?

23 Mr. Cedillos, last year because of the budget cuts,  
24 in spite of an increase in student fees, we had to wipe out  
25 4,000 courses. I'm sure you're familiar with that.

26 MR. CEDILLOS: Yes.

27 SENATOR PETRIS: When that happens, students already  
28





1 average five years in completing what's supposed to be a four-  
2 year course. Now we're imposing more cuts and increasing fees.  
3 I don't know how many courses are going to be eliminated this  
4 time, along with a lot of professors.

5 Do you have a solution in mind?

6 MR. CEDILLOS: I don't know that I have a solution  
7 that could be answered briefly here, Senator. However, I do  
8 have some thoughts and ideas about it.

9 In the short time that I've been on the Board of  
10 Trustees, one of the things that I have attempted to do, and so  
11 far have been fairly successful at, is developing private sector  
12 partnering with the University system.

13 In other words, developing private funds for programs  
14 and capital investments within the University system.

15 Another thing that I've done is, I've put together a  
16 team of CEOs of major corporations throughout the state. It's  
17 in formation right now, being headed by a CEO of one of the  
18 larger public companies based in California, where they are  
19 going to take upon themselves to assist in compensation at  
20 several levels for executives within the University system.

21 That is important because we -- as we go through the  
22 budget problems -- and I don't think it's going to go away this  
23 year. I think it's going to be around for a while -- we still  
24 have to maintain the competitiveness on -- on how and who, the  
25 quality of people that we hire to play key roles within the  
26 system.

27 So, those are some of the things that I've already  
28



1 begun to do.

2 SENATOR PETRIS: What's your financial goal?

3 MR. CEDILLOS: The financial goal, rather than a  
4 dollar figure, in my mind, is to maintain a commitment to the  
5 Master -- the Master Plan that's been developed. Access to --  
6 to the University system in California has been available and  
7 around as far as I can remember, and I'm a native Californian.  
8 Maintaining that access is absolutely paramount in my mind,  
9 without sacrificing the quality.

10 The answers to the problems are not simple, but I  
11 believe that there are answers there on how we can minimize the  
12 impacts that we -- that we're going to deal with within the next  
13 year.

14 SENATOR PETRIS: Your group of CEOs, I assume, is  
15 going to try to raise money; is that right?

16 MR. CEDILLOS: That's correct.

17 SENATOR PETRIS: To help compensate people?

18 MR. CEDILLOS: That's correct.

19 SENATOR PETRIS: At this time, you don't know the  
20 specific fixed goal, and how much it's going to take?

21 MR. CEDILLOS: No, in fact, I just went on the Board  
22 of Trustees about six months ago, and it took me about three  
23 months to get them put together. They just have started.

24 SENATOR PETRIS: All right.

25 Any questions by the Members? Senator Beverly.

26 SENATOR BEVERLY: Mr. Chairman, let me just first say  
27 we know Mr. Cedillos in the Long Beach community to be a  
28



gentleman of integrity and ability, a fine gentleman and fine appointment.

I'm pleased to move the approval.

SENATOR PETRIS: Okay, we have a motion.

Call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye.

Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Mello Aye.

Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye.

Senator Craven. Senator Roberti.

SECRETARY WEBB: Three to zero.

SENATOR PETRIS: That means your nomination will be recommended favorably to the Floor.

MR. CEDILLOS: Thank you very much, Senators.

SENATOR PETRIS: Good luck.

MR. CEDILLOS: Thank you.

[Thereupon the Senate Rules  
Committee acted upon legislative  
agenda items.]

SENATOR PETRIS: All right, we're back to Governor's appointees. The second one is Mr. Benjamin -- Admiral Benjamin Montoya for the State Board of Education.





1           Once an Admiral, always an Admiral; right?

2           ADM. MONTOYA: I can't deny it.

3           SENATOR PETRIS: You're retired, but it's proper to  
4 call you Admiral.

5           ADM. MONTOYA: It is, but I prefer Ben, PG&E style.

6           SENATOR PETRIS: Okay.

7           Do you want to tell us why we should vote for your  
8 confirmation?

9           ADM. MONTOYA: Well, first and foremost, after a long  
10 career in the Navy and now with PG&E, the one thing I would have  
11 liked to have done in government, it's this appointment in  
12 working on a board that is involved with K through 12 education.

13           I'm a native Californian, came up at a time when  
14 education was a little different than it was now, the issues  
15 were a little bit different than they are now. I've seen the  
16 whole range of some discrimination growing up. I've seen the  
17 days when speaking Spanish in school was punishable.

18           I've seen the system evolve, but nonetheless, not  
19 withstanding all that, being raised in a family that had a  
20 tremendous faith in the country's principles, I credit all the  
21 success that I've had to that fundamental education that I got  
22 early, not only through the K through 12 system in California,  
23 but later on through the secondary schools I attended.

24           And it would be my -- my goal as a member of the  
25 State Board of Education to bring that historical experience and  
26 try to deal with an issue that's very, very difficult in our  
27 state, particularly with the ways the demographics have changed  
28



1 so dramatically in the past 10-15 years.

2 So, I think I bring some unique qualifications, not  
3 only historically, but my own education, and my own perspective  
4 to -- to this issue.

5 SENATOR PETRIS: Any questions from the Members?

6 SENATOR MELLO: He's a good man.

7 SENATOR PETRIS: Does anyone here desire to testify  
8 in support?

9 MR. STEIN: Chairman Petris, Members of the  
10 Committee, I'm Joe Stein, President of the State Board of  
11 Education.

12 I'm here to ask your favorable action on the  
13 nomination of Ben Montoya to the State Board of Education.

14 Considering the difficult fiscal crisis that we are  
15 suffering at this time, I think it's important to mention  
16 another attribute that Ben brings to the State Board, and that  
17 is business acumen, personnel management, and a desire for  
18 accountability for the monies that are available to the school  
19 system.

20 Thank you.

21 SENATOR PETRIS: All right.

22 Any other witnesses in support?

23 MS. MELENDEZ: Good afternoon. I'm Melinda Melendez  
24 with the Association of California School Administrators.

25 Our association has had the pleasure and honor of  
26 working with Mr. Montoya for the last year, since he was  
27 appointed to the State Board.  
28



1                   We attend the State Board of Education meetings every  
2 month, and in that role I've had the opportunity to observe and  
3 interact with Board members on a large range of significant  
4 issues that are of importance to the entire K-adult education  
5 system.

6                   We believe that Mr. Montoya has already demonstrated  
7 his strong commitment to a very positive model, role model, if  
8 you will, in education in his short tenure on the Board. And we  
9 have been very impressed with his fairness and conscientiousness  
10 in working through all of the very complex issues that come  
11 before the Board. We have found him to also conduct himself in  
12 a very dignified and responsible manner, which we believe is  
13 appropriate to a Governor's appointee. We believe that's a very  
14 important attribute for someone who's in a serious policy-making  
15 position at the state level.

16                   So, he has earned our confidence and trust as we  
17 worked with him this last year.

18                   The last point I'd like to make is that it has been  
19 very critical for us and for the other organizations that  
20 observe the work and work with the Board that Mr. Montoya has  
21 displayed a very moderating influence on the Board during a very  
22 difficult last year.

23                   He, as I mentioned, is committed to a positive role  
24 on this Board, and he continues to keep the Board focused on  
25 what is appropriately the Board's business. And I -- as we  
26 know, as we observe it, he continues to do this despite the fact  
27 that other Board members continue to divert time and attention  
28







1 from the Board's business into repeated negative criticism and  
2 bickering, which does not help us at all.

3 So, I strongly urge your aye vote on this  
4 confirmation, and I hope that we have expressed to you how  
5 strongly we believe he is an important member of this Board.

6 SENATOR PETRIS: Thank you.

7 Any other witnesses in support?

8 MR. VELLANOWETH: Senator Mello, Senator Beverly,  
9 Senator Petris, ladies and gentlemen, my name is Roberto  
10 Vellanoweth. I'm the Chairman of the Republican National  
11 Hispanic Assembly.

12 I would like to speak on behalf of Ben Montoya and  
13 his confirmation. He has been in our community a long time, and  
14 he is a role model in our community for a long time. We would  
15 like to keep him as a Rear Admiral in our community for a long,  
16 long time, and also as a Board of Education member, he is role  
17 model.

18 He is culturally sensitive. I have seen him in  
19 action. I have seen him involved with our kids in our  
20 community, and with that involvement comes a sense of pride to  
21 our kids.

22 With his involvement, the community has gained an  
23 individual that is going to be a role model for a long time.

24 I really encourage your support for his confirmation.  
25 Thank you very much.

26 SENATOR PETRIS: Excuse me.

27 Can you tell me a little bit about the National  
28



1 Assembly? Is that a conglomeration of a lot of groups?

2 MR. VELLANOWETH: The Republican National Hispanic  
3 Assembly is a political organization. It is one of the  
4 organizations that I personally belong to. I also belong to the  
5 G.I. Forum; I also have LULAC, League of United Latin American  
6 Citizens, membership.

7 In this particular case, I'm representing the RNHA.  
8 However, he has been involved in all of our organization, not  
9 only as a member, but as a volunteer and working very heavily in  
10 our community.

11 I really encourage your support for his confirmation  
12 based on that. He's a real role model to our community.

13 SENATOR PETRIS: Thank you.

14 MR. VELLANOWETH: Thank you very much.

15 SENATOR PETRIS: Next witness in support, Mr. Ochoa.

16 MR. OCHOA: Mr. Chairman, Senators, Members, my name  
17 is Ralph Ochoa. I'm a member of the Board of Regents for U.C.

18 I've had the pleasure on a personal basis to know  
19 Admiral Montoya for a number of years, and I just wanted to  
20 share that very briefly, that I subscribe to the commendations  
21 that have been prefaced before my coming to the table.

22 He certainly is a person that the entire community of  
23 California is very proud of the Admiral. He is being a role  
24 model for the Midshipmen at the Academy, and certainly in his  
25 career, getting to be an Admiral, and now as an executive with  
26 PG&E.

27 It's something that he's committed and dedicated to  
28



1 excellence and quality, and those are the kinds of things that  
2 have made California great.

3 I think his leadership on the State Board of  
4 Education with your confirmation will continue that kind of  
5 dedication, and I urge your aye vote on the confirmation.

6 Thank you.

7 SENATOR PETRIS: Thank you.

8 Any others in support? Come on forward.

9 MR. GARCIA: Senator Mello, other Members of the  
10 Rules Committee, my name is Bill Garcia. I'm here representing  
11 the American G.I. Forum, and the American Mexican War Mothers.

12 We're here in support of Ben Montoya. We've known  
13 Ben for quite a number of years. He's been very active in our  
14 community; in fact, he's a member of the American G.I. Forum,  
15 and we've worked with him in that capacity as well as other  
16 organizations that he belongs to and is part of. He's a very  
17 active member in the overall state community, as well as in the  
18 Hispanic community.

19 I'll just repeat what Roberto Vellanoweth and Ralph  
20 Ochoa said, and that is he's a role model for not just our  
21 community, but for the entire state community. We urge that  
22 this Committee support his confirmation.

23 Thank you very much. Are there any questions?

24 SENATOR PETRIS: Any questions? I guess not. You've  
25 made your case.

26 MR. GARCIA: Thank you.

27 SENATOR PETRIS: Any other witnesses in support?  
28







1 Anyone who desires to testify in opposition?

2 MR. WILSON: My name is Hank Wilson with Gay and  
3 Lesbian Youth Advocates.

4 I made communications with your Committee that I  
5 wanted to testify as a concerned person, a person with concerns,  
6 not in opposition and not in support.

7 The gay and lesbian community does not know  
8 Mr. Montoya. We are recently emerged. We talked about changing  
9 demographics in this state in the last 10-15 years.

10 I was a teacher during the Brigg initiative. My  
11 professional livelihood was put on the line.

12 I've been attacked by a group of five young people,  
13 probably either in high school or young guys just out of high  
14 school. I had about five stitches in the emergency room.

15 The messages that I heard back then during the Brigg  
16 initiative are still happening. There's forces in this state  
17 that are not helping us deal with anti-gay violence, that are  
18 not recognizing that young gays and lesbians are in the schools,  
19 that young people questioning about their own sexuality are in  
20 the schools. I say questioning.

21 And my concern -- any my concern to Admiral Montoya  
22 and to this Committee is, what is the message we give these  
23 young people?

24 In the past, mostly we haven't given a message about  
25 sexual orientation. We have omitted a message When we omit a  
26 message, what does that do to young people? It leaves them with  
27 questions, it leaves them with uncertainty, it leaves them  
28



1 isolated. It leaves them without support. Some of this  
2 information or support can be life saving.

3 Will this change? Hopefully, it will, and I think  
4 that's a challenge.

5 When we heard about Mr. Montoya being a role model  
6 for the entire state community, and I've heard -- I've heard  
7 that today and I've heard it from other people who have told me  
8 that Mr. Montoya is open-minded and fair, we need -- I'm talking  
9 about we, meaning all of us -- role models who will stand up to  
10 prejudice, stand up to stereotypes, stand up to -- to myths, and  
11 deal with some of these issues.

12 I have a loving family. My mother is out of a  
13 nursing home right now because I'm still a member of my family.  
14 I am home every weekend to help my dad take care of my mother,  
15 who's disabled.

16 If I had been rejected by my family, not given  
17 support, we would be weaker, my mom would not be at home; she  
18 would not be able to be taken care of.

19 I look to the time because of an institution, and  
20 that institution is a key one, which you're making a commitment  
21 to, that is education, that we will -- we will bite the bullet  
22 and deal with the reality that sexual orientation is something  
23 that should be dealt with fairly and accurately, and understand  
24 that there are people that would be upset, but not be paralyzed,  
25 not be able to deal with it.

26 The history in this state in terms of the educational  
27 role has been one of a small group of us to stand up for the  
28



1 rights and the interests of our young people, to raise  
2 questions. A lot of the professional groups have take positions  
3 in our support, but they haven't given leadership. It's been up  
4 to us. So, we -- we raise those questions.

5 The current health framework, which is before the  
6 State Board of Education at this time, has already generated  
7 polarization in this state. And I -- and I'm disappointed at  
8 that, but I'm not surprised. The messages that are being hit  
9 against us are no different than they were when I was teaching  
10 in 1978, when the Brigg initiative was put on the ballot.

11 We need to break the isolation of young -- young  
12 people. I'm talking about young gays and lesbians in the  
13 schools. We need to break the rejection, and the hostility. We  
14 need to own and acknowledge that there's anti-gay violence. It  
15 is happening. It's growing. It's epidemic in our community. I  
16 don't know if everyone's aware of it; I'm assuming that many  
17 people aren't.

18 Youth suicide is a major problem. Research studies  
19 have shown that young gays and lesbians attempt suicide and  
20 commit suicide in greater numbers than their peers.

21 Our young people have a very severe drug abuse and  
22 alcohol problem, and part of that goes with the rejection and  
23 the isolation.

24 In terms of -- my final points are this. I'm  
25 concerned about all young people, not just gays and lesbians and  
26 young people questioning their -- their sexual orientation. I'm  
27 concerned about the future parents of this state. Every young  
28







1 person is a future parent, and the challenge is, will we have  
2 strong families; will we have families that are informed about  
3 sexual orientation issues, respectful, understanding and  
4 supportive? Or, will we continue the traditional fear, the  
5 traditional ignorance, the traditional rejection, traditional  
6 hostility of parents to their kids?

7       You know, San Francisco and Los Angeles, both cities  
8 have a large runaway youth -- large numbers of runaways.  
9 They're called runaways. Many of these people are push-outs.  
10 Their parents were never taught about sexual orientation. They  
11 grew up either ignorant with no mention of it, or they believed  
12 myths and stereotypes.

13       How do we change that? If there's any institution in  
14 this state that has the responsibility in this, it's the  
15 schools. It's a tough one, and we've got -- we've got to -- we  
16 want a commitment that we're not afraid to deal with it, and  
17 that we're ready to give -- give support on this issue.

18       That's what my concern is, and that's why I'm  
19 testifying today.

20       And I hope -- I hope that the role model -- and I  
21 think there's great hope anytime there's a new appointee to the  
22 State Board of Education -- we need role models on that State  
23 Board. We need role models to deal with the reality of this  
24 diverse state, this increasingly diverse state. And we may have  
25 an opportunity, it's going to be tough, but it's going to be --  
26 it's going to be controversial.

27       The script -- and this is what is so distressing.  
28



1 The script is no different than when I was teaching in 1978.  
2 The script is the same. Unfortunately so, the suicides, the  
3 anti-gay violence, the homophobic attacks. We need that  
4 support.

5 I have -- I have a document here from the State  
6 Department of Education, which has resource material. And in  
7 it, in this document, there are two references to Project Ten in  
8 Los Angeles. And these are put out by the State Department of  
9 Education.

10 Hopefully -- hopefully, you're supportive of this  
11 kind of supplementary resource material to give teachers that  
12 went through college, got Ph.D.s, got Masters, and they weren't  
13 taught about sexual orientation. Yet, we have a big gap.

14 Once we decide there's a -- a goal, how are we going  
15 to do that? Who's going to make up this gap? It's a big  
16 challenge.

17 I would share this with you, and I will read this --  
18 I want to read this into the record.

19 "Dear Gay and Lesbian Youth Advocacy  
20 Council:

21 "My name is ...

22 and I'll omit the name,

23 "I am 17 years old. I'm just coming  
24 to terms with my sexuality.

25 "I would like any information  
26 you could send me about gay teens  
27 and survey results, teen groups in  
28



1 my area that you may know of, or any  
2 help you can give on gay living and  
3 gay people.  
4

5 "I want to learn anything I can  
6 about who I am now that I know. Is  
7 there anyone I can write to who is  
8 gay and who is a teen?

9 "I am waiting for your  
10 information anxiously. Thank you  
11 for any help you could give."

12 The person signed it. It says:

13 "P.S. Please keep my address  
14 strictly confidential as I am very  
15 much closeted."

16 The challenge is, if there's anything -- if the  
17 schools cannot give information -- they have in the past, and  
18 they have failed in this role on sexual orientation, what  
19 institution will do this?

20 And here we are, in the last 10-15 years, a recent --  
21 we've always been around, but recently we are an emerged  
22 minority. We're different from other minorities in a special  
23 way. That is, our parents by and large are mostly not gay and  
24 lesbian.

25 Other minorities -- Hispanics, blacks, Asians -- have  
26 parents who are also of that -- of the same race, and there's a  
27 different kind of sensitivity, different kind of support. We're  
28 a unique minority in that support.





1                   And we are calling for some new understanding, some  
2 new acknowledgment.

3                   We communicated with Mr. Montoya through a letter  
4 back in March, and we received a letter a couple weeks ago.

5                   And we appreciate -- appreciate that you're  
6 communicating with us. We look forward to working with you in  
7 the future in many different ways, because I feel like you are a  
8 respected role model, and maybe you can be someone that can give  
9 some new levity and some new momentum to solving problems.

10                  Thank you.

11                  SENATOR PETRIS: You may want to share those  
12 recommendations with all the Board members, if you haven't  
13 already. Have you considered that, writing to all the Board  
14 members?

15                  MR. WILSON: Yes.

16                  SENATOR PETRIS: Thank you.

17                  Any other witnesses? Come forward.

18                  MR. MCPHERSON: My name is Ken McPherson. I'm with a  
19 less than year-old organization called Forgotten Scouts, a  
20 national organization composed of gay people who, at one time in  
21 their lives, have been Scouts: Boy Scouts, Cub Scouts,  
22 Explorers, volunteers, den mothers, parents within Scouts. Many  
23 gay people are parents.

24                  Hank very broadly described many of the issues of  
25 concern generically within the lesbian and gay community.

26                  We have to specifically ask a few questions, and it's  
27 for this reason: with regret, I must oppose the nomination at  
28



1 this point.

2 We've seen two resumes for Admiral Montoya at this  
3 point. The first one included the information that he has served  
4 on the Executive Council of the Boy Scouts of America. The  
5 second resume, that was deleted; for what reason, we don't know.

6 We need to make it clear that the issue with the Boy  
7 Scouts on the front page of the Examiner today is a cutting line  
8 issue that deals with young people. When we've heard the  
9 discussion of what a role model is, and a person who supports  
10 the entire community, we are forced to ask very specific  
11 questions, and that's what I am here to do, to encourage you, as  
12 Members, to ask very specific questions s to the general issues  
13 that Hank has outlined.

14 Within the Boy Scouts of American, in 1978, they  
15 adopted a policy which specifically and actively discriminates  
16 against known or avowed -- their language -- homosexuals. You  
17 cannot be a member of the Boy Scouts, you cannot be a volunteer,  
18 you cannot be a den mothers, you cannot be an Assistant Scout  
19 Master, if it is known that you're gay.

20 You may be gay. There are many, many, many gay  
21 people within Scouting, and we can prove that very easily from  
22 our own membership.

23 The issue is, the Boy Scouts insists that you lie  
24 about that fact. If you're willing to remain in the closet,  
25 play the game, promote the very things that lead to suicide in  
26 lesbian and gay youth in our community, you may participate in  
27 Scouting.  
28



1 I don't know Admiral Montoya. We have not discussed  
2 these issues. But we think it's very important that before we  
3 have a new member of the California State School Board, when  
4 people are using, endorsing, phrases like "supportive of the  
5 entire community", find out truly whether he in fact is  
6 supportive of that ten percent of the California school system,  
7 which is lesbian and gay or bisexual.

8 So, I strongly urge you to ask him, because of his  
9 leadership in the Boy Scouts -- they took the line on this, not  
10 us -- such questions as this: What is your current relationship  
11 with the Boy Scouts of America? What is your past relationship  
12 with the Boy Scouts of America? What is your specific  
13 understanding of who the lesbian and gay community is?

14 Are we a minority, as some of the other minorities  
15 that have been discussed, or in fact do we as individuals choose  
16 to be homosexuals? Because the answer a person gives in that  
17 particular question is going to be particularly telling.

18 If he believes, in fact, that people choose to be  
19 gay, we would strongly urge your opposition for his admission on  
20 the California State School Board. That means, by definition,  
21 personally he thinks as many as ten percent of the people  
22 participating in the state school system are less than adequate.

23 In fact, the language of the Boy Scouts currently --  
24 now, we're talking about within the past couple of weeks -- is  
25 people are, by definition, bad role models, are antithetical to  
26 traditional family values. In fact, suddenly, the BSA, who, on  
27 the front page of their magazine, has said: "For All Boys", is  
28







1 now, quoting Blake Lewis, their statesman, saying "The Boy  
2 Scouts is not for everyone."

3  
4 I understand that these are questions that many  
5 people within Scouting disagree with, because we receive phone  
6 calls on a daily basis from Scouters saying, "How can we  
7 disagree with the national leadership without losing our  
8 charters?" Because that is currently what is going on. If you,  
9 within the Boy Scouts of America, oppose their policy, you lose  
10 your charter, case closed. "We will not discuss this issue."

11 So, I regret that we must very specific in asking  
12 Admiral Montoya how should the State School Board react to a  
13 private organization -- that's what the Boy Scouts say they are  
14 -- who currently works within the schools, both on a volunteer  
15 basis -- they have a program called "Learning for Life" within  
16 the schools during school hours and after school hours.  
17 Certainly, most of us participated in Scouting meetings.

18 What does the state -- how does the State School  
19 Board react? How is it appropriate to react with a private  
20 organization that actively discriminates against people based on  
21 sexual orientation?

22 We have to ask you, Admiral Montoya, would you  
23 publicly refute the BSA policy of active discrimination of  
24 people based on sexual orientation in terms of your relationship  
25 with the School Board?

26 We look forward to the answers to these questions.  
27 We very much wish to change -- we want to accept you.  
28 Everything we've heard about you is wonderful, and if it extends



1 over to this area, we will be glad to join in support.

2 And if it does not extend into this area, you  
3 seriously have to question putting a person on the School Board  
4 who blanketly supports an organization that says ten percent of  
5 the population of California school children and parents are  
6 immoral and bad role models.

7 Thank you for listening.

8 SENATOR PETRIS: Hold on.

9 Any questions of this witness? I guess not. Thank  
10 you.

11 Any other witnesses?

12 Okay, you get the last word. Respond to any of the  
13 comments made by any of the witnesses.

14 ADM. MONTOYA: Well, I would like to respond  
15 generally.

16 First of all, as a role model, I don't think a person  
17 imposes himself on any given community to be their role model.  
18 Communities select you as a role model for whatever attribute.  
19 It can be on ethnic grounds; it can be on gender grounds; it can  
20 be a long any number of grounds. So, all these who have called  
21 me a role model, I don't use that phrase because it's not for me  
22 to use.

23 Secondly, my association with the Boy Scouts has been  
24 interesting. I was a Scout as a very, very young person. My  
25 experiences were not particularly good at the time, primarily  
26 because of economic status, and, to a degree, I think, the  
27 ethnicity that I represented, it wasn't totally accepted. And I  
28



1 felt it, but didn't realize it until later.

2 Interestingly enough, when I came to Sacramento as a  
3 retired Navy Admiral, I was approached by the local Boy Scout  
4 chapter. I was approached by a number of groups representing  
5 PG&E, a very respected company in the state and in the area, to  
6 be on various boards.

7 And I had a long discussion with the Boy Scout folks  
8 before I joined them, expressing my concerns of years ago, and  
9 asking if the Scouts had learned to reach out to parts of the  
10 community where they weren't traditionally involved in Boy  
11 Scouts.

12 But in my case, because I know something about  
13 Mexican-Americans, that's where I focused, I went on the Board  
14 with the proviso that, to the extent that the Boy Scouts  
15 weren't, in my judgment, doing a job they should be doing in all  
16 areas, particularly in the area which I'm familiar and  
17 interested, that I would not be interested in staying with them.

18 So, with that proviso, I joined, and we did some  
19 work, began some outreach programs in the Hispanic community.

20 Since I left Sacramento and went to the Bay Area in a  
21 new position, I resigned that affiliation with the Boy Scouts,  
22 mainly because of the geographical separation. And therefore, I  
23 currently have no association with them formally.

24 But fundamentally, I'd say what I just said, because  
25 I believe that people should be judged on who they are and no  
26 further, whether in a workplace, school place, and one must --  
27 in fact, I frankly abhor intolerance, physical or mental. One  
28







1 person against another, one nation against another, over  
2 differences.

3 With that as a background, I'm prepared to deal with  
4 the issues that come before the State Board of Education with  
5 open eyes, open ears, and deal with them on a case by case  
6 basis. I don't know everything about everything, and I think  
7 that fact alone prepares me to listen to information that will  
8 come before us, to address the issues as they come up, with the  
9 latest information that's available in this day and age, not of  
10 30 years ago, or 20 years ago, but this day and age, and deal  
11 with it accordingly.

12 That's my general response to the last two speakers.

13 And I want to thank all those who spoke on my behalf.  
14 I want to assure them that I will do what I can to merit their  
15 very, very fine comments.

16 Thank you very much.

17 SENATOR PETRIS: Any questions?

18 Let me ask a couple with respect to the last two  
19 witnesses. One of them mentioned the health curriculum  
20 framework that's under development now, and asked if there would  
21 be an appropriate flow of information to the high school  
22 students regarding sexual orientation, and a factual and  
23 appropriate discussion of AIDS prevention, of sexual  
24 orientation, birth control.

25 I know that's very controversial. We've had bills on  
26 that that get either defeated or vetoed by the Governor.  
27 Senator Hart, you know, carried the bill for years to provide  
28



1 education along those lines.

2 How do you think that would fit into your program  
3 relating to the health curriculum framework?

4 ADM. MONTTOYA: Well, I think that that issue, it is  
5 controversial. And one of the difficulties in the State of  
6 California is that we have much autonomy in the way the state  
7 school system is organized, along local school boards. They  
8 have considerable to say about what and when things are taught,  
9 at what age, to what degree. That's what this article was  
10 about. The whole article's about the local parents have a  
11 different view of the school, of what's being taught.

12 We're in the process of taking testimony. I've been  
13 a recipient of much mail regarding those frameworks.

14 I, quite frankly, have not in my own mind come to the  
15 conclusion as to what total position I'll take, because there is  
16 so much to listen to. That'll be before us within the month.

17 I'm looking for, quite frankly, my bottom line will  
18 be that we provide as much as information at the right time in a  
19 young person's life so that they can make informed decisions.  
20 I'm a believer that education of whatever type in a free  
21 society, education and information go together so that people  
22 can make informed decisions. To try to do otherwise is to deny  
23 the fact that education or information will get to people in  
24 some other form, and maybe not as good a form as it can be done  
25 in the formal fashion.

26 We have our work cut out for us. And I don't purport  
27 to have the answers here today, but I can assure you that I know  
28



1 it's controversial, and I'll be seeking that proper ground so  
2 that our kids get the best possible broad education to take care  
3 of themselves, and to be tolerant of all people.

4 SENATOR PETRIS: On bilingual, that's another hot  
5 potato, bilingual education. We go back and forth on it. We  
6 had a great statute which got wiped out.

7 What is your position generally, number one, on  
8 whether we should any bilingual education in California. And if  
9 you think we should, what form should it take?

10 ADM. MONTTOYA: I guess that issue has been around as  
11 long as I've been around. I think I mentioned in my opening  
12 statement that when I went to school, if you spoke that other  
13 language, you could find yourself before the principal.

14 I'm delighted to know now that not only is  
15 bilingualism, but multilingualism is being recognized for what  
16 it is: a tremendous asset in this world of ours.

17 Let me start at the back end and work forward.

18 Good afternoon, Senator Roberti.

19 Is that at the end of the educational process,  
20 wherever it is, Senator Petris, I believe that if a person is  
21 going to succeed in our society and have the full benefit of all  
22 the institutions, and to use the institutions, and to have full  
23 access to the economic activities that are going on, I think  
24 that at the end, English has to be for that person as good as a  
25 secondary language. I think that English has to be acquired and  
26 well-used. I use myself as an example.

27 I think bilingual education, in a sense that I think  
28







1 you're talking about, those that come to our country at whatever  
2 age and do not speak English at all, I think that bilingual  
3 education programs ought to be geared to facilitate the  
4 transition to no English to all English as rapidly as it takes.

5 I'm not expert on the various types of bilingual  
6 education, but I do believe that there is a place for it so  
7 that, one, our immigrants feel welcome, the fact that people in  
8 our country are willing to spend the time and effort to teach  
9 English. And number two, that they are given the opportunity to  
10 transition and to compete in the classroom and in society as  
11 early as possible into their new country.

12 So, that's my general philosophy on bilingual  
13 education. The type that I would be -- let me take a bit of  
14 risk here, and say to you that to teach subjects in both  
15 languages for a prolonged period of time, I think, can work the  
16 other way. I think it'll work the other way.

17 So, I think, you know, that's basically where I stand  
18 on that issue.

19 SENATOR PETRIS: How many persons from the Latino  
20 community have attained the rank of Admiral or General?

21 ADM. MONTTOYA: In my -- in the Navy, in my career, I  
22 knew -- there were four of us. There were three when I retired,  
23 and I left them with two.

24 Out of that group, there were two Mexican-Americans;  
25 one of them was Tom Flores's brother, an Admiral in the Supply  
26 Corps, Joe Flores; then a classmate of mine who was truly  
27 Spanish, his parents were from Spain, Jessie Hernandez, Flag  
28



1 Officer out at Moffit Field when he retired. The other  
2 gentleman, who is Duke Hernandez, who rose to the rank of three  
3 star, is of Puerto Rican decent.

4 I was one of three U.S. Hispanics graduated from  
5 Annapolis in 1958, so there haven't been many of us around. But  
6 tremendous strides were made during my years in the Navy, to the  
7 extent that now we have at any one time at Annapolis upwards of  
8 250 Hispanic Midshipmen, and we have a large --- we doubled,  
9 from 1980 to 1990, roughly, we doubled Hispanic Naval officers  
10 from 800 to over 1600.

11 Still, I feel, below the numbers that there ought to  
12 be in the Navy as an institution that promotes leadership and so  
13 forth. But nonetheless, great strides in the last few years  
14 that I was in the United States Navy.

15 SENATOR PETRIS: You're a Vice President of PG&E?

16 ADM. MONTOYA: I'm the Senior Vice President for the  
17 gas side of our business.

18 SENATOR PETRIS: You're in charge of the gas part of  
19 the operations?

20 ADM. MONTOYA: That's right. I get the gas down here  
21 from Canada, and from Texas, in the big pipes, yes, sir.

22 SENATOR PETRIS: Now, having risen to very high  
23 positions in the private sector and in the service, military,  
24 where is the competition keenest, as you saw it?

25 ADM. MONTOYA: I think it's keen in both places, but  
26 in my judgment, the military system is a bit of a better system.  
27 I've been in the private sector for two-and-a-half years, and  
28





1 therefore haven't seen much movement. So, I'm making a judgment  
2 based upon 35 versus two-and-a-half.

3  
4 But the military system is a meritocracy. If one  
5 starts with a base of people that represent randomly the entire  
6 country, through the process of fitness report writing, and  
7 counseling, and the make-up of boards as the services have done  
8 to make sure that there are people on selection boards that are  
9 -- represent genders and ethnic groups, you see a fairness  
10 taking place that is predictable because people know where they  
11 stand at every stage of their career.

12 It's a little bit more nebulous in the private sector  
13 that I've seen. I think my company, for example, has recognized  
14 that, and is taking steps to do the kinds of things that gets a  
15 better mix of officers and senior managers. I might be, and I  
16 think I am, the senior Hispanic in the entire utility industry  
17 in the country. And it's just -- you know, one looks at that  
18 and says, why? Is it a coincidence that I am the only one that  
19 could be doing what I'm doing in the entire country? I don't  
20 think so.

21 But those are the kinds of things being recognized  
22 and steps being taken, certainly in my corporation, to correct  
23 that. But you correct it by changing the mix at the entry  
24 level, actively seeking those from all parts of our society to  
25 start that growth up.

26 SENATOR PETRIS: I read somewhere that there are  
27 about 60 Admirals and Generals from the Black community right  
28 now in the service, but I don't think there are 60 CEOs of





1 comparable institutions on the outside.

2 ADM. MONTTOYA: I think it's fair to say that the  
3 military services, because of the nature of it, can very quickly  
4 reflect the country's sense of what the country wants, acted  
5 through the Congress, and then reflect it quickly in the  
6 military.

7 I'm very proud of that, the ability to shift and  
8 understand new policy, and get on with it.

9 I might add editorially that recent events in the  
10 Navy, those of us who were in it and are out of it, aren't at  
11 all pleased with what went on in Las Vegas, but I also am proud  
12 of the fact that the leader said, "My fault," and he's gone. I  
13 think we'll deal with it.

14 And I also feel that there're going to be some  
15 tremendous steps taken that that kind of behavior doesn't happen  
16 again. That's the kind of confidence I have in that  
17 organization, not withstanding this major glitch.

18 SENATOR PETRIS: Last question.

19 I found a pen here that all of us are looking for  
20 with respect to the budget. It's a magic pen. If you use it,  
21 you can do anything you want. You can get all the money you  
22 want; you can develop whatever program you want.

23 If I lend you this pen and ask you what is wrong with  
24 our school system, K-12, how would you correct it, what would  
25 you do?

26 ADM. MONTTOYA: The reaction would be, give me the  
27 pen, let me write the check.  
28



[Laughter.]

ADM. MONTROYA: But you aren't going to let me have it. So, we will take as a given, Senator Petris.

You know where my feelings sort of lie and look, there are things -- I'm also an engineer, and dealt with the Navy's engineering bureaucracy all those years, and the engineer organizations generally come after submarines get theirs, and aviators get theirs, and the ships get theirs, and the engineers are told, "Here's what's left, now make it work."

Fundamentally, I think that when you're dealing with a situation we're in right now, I think you tend to make wiser decisions in difficult times than you do when there is plenty. And I think that what is going on now is going to inspire us through need to take a hard look at the entire structure of how our school system is put together.

And I have a sense that somewhere between the students and bureaucracy in Sacramento, there are some structural changes that need to be made, because we have tremendous facility problems. I think one of the issues in our school systems is not just -- the school teachers or lack thereof, or training or leadership, the facilities. So many of our places that need it most, inner cities, are just terrible. They're not conducive to learning, and they're not conducive to getting pride and esteem. And so, I want to apply my expertise in that area.

And from a management perspective, and I really think Bill Honig tends to share this view, is that this is the right



1 decision making, more -- control in the hands of the local  
2 principals and teachers may give us the opportunity to rethink  
3 the way we teach and be able to do more education with less  
4 bureaucracy in between than we have in the past.

5 So that -- that -- I think that's got to be our  
6 focus, to look at that piece of the action that is not directly  
7 involved, or indirectly directly involved in the actual  
8 teaching.

9 SENATOR PETRIS: Thank you.

10 CHAIRMAN ROBERTI: We've taken all the testimony.

11 I'm glad I'm here in time to be able to vote for your  
12 confirmation. It's good to see you once again.

13 ADM. MONTOYA: Thank you, Senator.

14 SENATOR BEVERLY: Move we recommend the confirmation.

15 CHAIRMAN ROBERTI: Senator Beverly moves that  
16 confirmation be recommended to the Floor.

17 With that, we'll call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Mello Aye.

24 Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven. Senator Roberti.







1 CHAIRMAN ROBERTI: Aye.

2 SECRETARY WEBB: Roberti Aye.

3 CHAIRMAN ROBERTI: The vote is four to zero;  
4 confirmation's recommended to the Floor.

5 Congratulations. We look forward to working with  
6 you.

7 ADM. MONTTOYA: Thank you very much. I do, too.

8 [Thereupon the Senate Rules  
9 Committee acted upon legislative  
10 agenda items.]

11 CHAIRMAN ROBERTI: Back to Governor's appointees,  
12 next is Donald W. Murphy, Director of Parks and Recreation  
13 Department.

14 SENATOR MELLO: Mr. Chairman, while he's walking up  
15 here, I'd just like to say that the Governor looked clear into  
16 Monterey County at Big Sur State Park there to select Mr. Murphy  
17 to be the State Director. And then once he got here, he got  
18 Harry Wright, who's here in the audience, his Area Supervisor in  
19 the Parks system now. So, Monterey County's lost two top  
20 persons, and we're hoping through their service up here, they  
21 can help bring back some of the talent.

22 MR. MURPHY: I'm sure they'll find somebody.

23 I was hoping you wouldn't hold that against me.

24 [Laughter.]

25 CHAIRMAN ROBERTI: Mr. Murphy, we'll ask you why you  
26 feel qualified to assume this position?

27 Senator Mello sort of indicated a little bit.  
28



1  
2 MR. MURPHY: First, I'd like to say thank you for  
3 giving me this opportunity.

4 I have been a career Park professional for the last  
5 13 years. For the last six, as the Superintendent in various  
6 locations, most recently, as Senator Mello indicated, in  
7 Monterey County down at Big Sur. Prior to that I was  
8 Superintendent of the Chino Hills District in Riverside County;  
9 prior to that, Superintendent of the State Parks up in Plumas  
10 and Eureka County.

11 I served as a Training Officer in Monterey at our  
12 Training Center in Pacific Grove, and for four-and-a-half years,  
13 as State Park Ranger on the beaches of Southern California.  
14 That's basically my background as a career professional in the  
15 State Parks.

16 I've also served as President of the California State  
17 Park Rangers Association for two years, and been active in the  
18 environmental community as a board member for the last four or  
19 five years on the Planning and Conservation League, both  
20 representing the State Park Rangers and individual members as  
21 well.

22 I think my greatest qualification is the fact that  
23 I'm a product of being able to go to state parks as a youth and  
24 benefit from the positive experiences that I had there. I think  
25 it has everything to do with the kind of adult and public  
26 servant that I am today, and I think that's crucial.

27 And the other qualification is that I just have a  
28 deep, abiding love for our state parks and the quality of the



1 environment for the State of California, and believe that that  
2 quality of environment is totally contributory to the quality of  
3 life in California and the state of our economy, attraction of  
4 jobs, and health and well being of the people of the State of  
5 California as well.

6 Thank you, Senators.

7 CHAIRMAN ROBERTI: Are there any questions?

8 SENATOR MELLO: Mr. Chairman, I'd just like to add  
9 one other thing.

10 When he came on board, everyone knows how our state  
11 parks are being -- getting cutbacks in personnel, and several  
12 parks are closing, and there's some tremendous problems around  
13 the state.

14 I'd like to have Mr. Murphy explain how he presently  
15 is now working with the Governor in trying to meet this  
16 challenge in making some cuts. He's restructured the Park  
17 system, looked up middle management, and restructured the  
18 administration part in a commitment to try and keep as many  
19 parks open as possible and get us through this crisis we're in  
20 right now.

21 MR. MURPHY: I'd be happy to speak to that.

22 Prior to my coming on board, there was a number of  
23 strategies that were being discussed to meet with what was a \$23  
24 million projected budget deficit for fiscal year '92-93. There  
25 was a lot of talk about park closures.

26 My feeling as a Park professional is that the parks  
27 belong to the people of the State of California. The last thing  
28







1 you want to do is take away that resource.

2  
3 So coming in, we decided to form a committee to take  
4 a look at the Department from top to bottom, and I directed the  
5 committee to concentrate on our limited resources at the area  
6 where the service was provided to the public, and to cut out  
7 areas of administrative overhead, to look for efficiencies. And  
8 that committee was able to save about \$10.5 million to mitigate  
9 the need for us looking to close a number of state parks.

10 I'm not particularly proud of the fact, or boastful  
11 of the fact, that it was done at the expense of our middle  
12 management, but I simply asked our committee to take in these  
13 difficult fiscal times an honest look at the Department.

14 The committee was made up of career Park  
15 professionals, and input was taken from over 500 employees in  
16 the Department. And they recommended these changes, and this  
17 restructuring, which consolidated about 57 administrative  
18 districts in the field down to 23; approximately 17 headquarters  
19 districts down to 9; and increased the number of field  
20 employees, where the service is provided to the public, from  
21 approximately 69 percent of our employees to 79 percent of our  
22 employees, which is significant, while at the same time  
23 reducing our administrative overhead about 35 percent.

24 CHAIRMAN ROBERTI: Is there any opposition in the  
25 audience?

26 We have a list of people here in support. I think  
27 I'll just mention their names: Mr. Gerald Bryant, President of  
28 100 Black Men; Mr. Samuel Cullers, President of Sacramento Urban



1 League; Mr. James C. Dodd, President of Dodd and Associates,  
2 Architects and Planners; Mr. George Finley, Chair of the  
3 Committee for Employment Opportunities, Black Political  
4 Association of Fresno; Mr. Reggie Sears, First Vice President of  
5 Black Advocates in State Service; Mr. Ed Willis, President of  
6 the National Forum of Black Public Administrators; Mr. Mark  
7 Palmer, Conservation Director and Chief Executive Officer for  
8 the Mountain Lion Foundation.

9 It's an impressive list of support.

10 MR. GARCIA: I also am here representing a coalition  
11 of organizations, Senator Roberti.

12 CHAIRMAN ROBERTI: Please speak for the record so she  
13 can get your name down.

14 MR. GARCIA: My name is Bill Garcia. I'm State  
15 Advisor for the G. I. Forum. I'm also here representing a  
16 coalition of Hispanic organizations, including: LULAC, the  
17 League of United Latin American Citizens; the RNHA, and that's  
18 the Republican National Hispanic Association; the War Mothers;  
19 the Hispanic Chamber of Commerce.

20 We met with Mr. Murphy on various occasions over the  
21 past seven months. We are very much impressed with his platform  
22 and his commitments.

23 We urge his confirmation today, sir.

24 CHAIRMAN ROBERTI: Thank you, Mr. Garcia.

25 Yes, please come forward.

26 MR. HAM: Mr. Chairman, Members, Bob Ham representing  
27 the Off-road Vehicle Legislative Coalition.  
28



1                   In past occasions, we haven't had the opportunity to  
2 welcome our new Director this way, and so we'd particularly like  
3 to be heard.

4                   We represent the major off-road organizations in  
5 California, which are a major constituency of the Department,  
6 and this year are a major funding source as well.

7                   And we've found this Director to be very easy to deal  
8 with. He has been very willing to listen to our concerns. He  
9 has -- we don't expect to agree on everything, but we do urge  
10 your confirmation.

11                  CHAIRMAN ROBERTI: Thank you very much.

12                  Next witness.

13                  MS. SADLER: I'm Lynn Sadler with the Planning and  
14 Conservation League.

15                  We've known Don Murphy for a number of years, as he's  
16 been a Board member. And I served with him on a couple of task  
17 forces that were formed to basically rescue, I would say, a  
18 rather ailing Department.

19                  We think he's a breath of fresh air, and we look  
20 forward to working with him.

21                  CHAIRMAN ROBERTI: Thank you.

22                  I have been concerned a little bit about some of our  
23 resources have to be put into urban parks as well as less  
24 populated areas.

25                  I would just be interested in knowing if the  
26 Department intends to maintain a policy of looking out for state  
27 participation in urban parks and recreation?  
28







1           MR. MURPHY: Absolutely, and I'm, you know, really  
2 happy to report a new program that we've started in that regard.  
3 Maybe I'll just give you a description of the Candlestick  
4 Recreation Area, which has always been a long-time commitment,  
5 as well as the Baldwin Hills State Recreation Area and State  
6 Park, and all of the Southern California beaches, which get our  
7 largest population, visitation, are in heavily populated areas  
8 as well.

9           But the new focus that we have because of the  
10 commitment that we have to serve all the people of the State of  
11 California has to do with a new program we started called  
12 Project Camp. It's a family-oriented program which I'm just  
13 going to take a minute to describe.

14           We really go into the urban communities. This was a  
15 recommendation that we took from our Hispanic Advisory Council.  
16 What we do is work with the local community at the local  
17 community centers, with their families, because many times,  
18 children will go to state parks and have a wonderful experience,  
19 come back home and say, "Mom and Dad, I want to go camping."  
20 And Mom and Day will say, for various reasons, "We can't go,"  
21 because the car's not good, or I don't know how to camp, or we  
22 don't have the equipment, and that sort of thing.

23           So what we are doing with our sister agencies and  
24 resources is actually going to communities and training them how  
25 to use the state parks. In this past month, we took 50  
26 individuals, about five families, up to Silverwood Lake, and  
27 they were families. And these families had a wonderful  
28



1 experience. They'll go back and share that experience with  
2 others; also share their expertise on how to put a tent up, how  
3 to identify poison oak; how to fish; all the wonderful things  
4 that you get to experience. And then there's a domino effect, a  
5 snowballing effect, that takes place, and then other people in  
6 that population come out and use the state parks.

7  
8 We're in the process now of putting together a  
9 booklet to teach other urban recreational centers how to do that  
10 and get their -- their kids out to the state park. Some of the  
11 funding is underwritten by cooperating associations as well as  
12 the State Park Foundation.

13 So, we're very cognizant of that, working everyday to  
14 improve our efforts there.

15 CHAIRMAN ROBERTI: Very good.

16 MR. MURPHY: Thank you.

17 CHAIRMAN ROBERTI: When was this program put  
18 together?

19 MR. MURPHY: It's called Project Camp [sic].

20 CHAIRMAN ROBERTI: Project Camp?

21 MR. MURPHY: Yes.

22 CHAIRMAN ROBERTI: Are there any other questions of  
23 Mr. Murphy?

24 SENATOR MELLO: Mr. Chairman, I would like to move  
25 his nomination.

26 CHAIRMAN ROBERTI: Senator Mello moves nomination be  
27 recommended to the Floor.

28 Secretary will call the roll.



1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye.

4 Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Mello Aye.

7 Senator Petris. Senator Craven. Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 SECRETARY WEBB: Roberti Aye.

10 Three to zero.

11 CHAIRMAN ROBERTI: Senator Petris isn't here to vote,  
12 so the vote's three to zero; confirmation's recommended to the  
13 Floor.

14 Senator Petris will be back. We'll leave the role  
15 open for him.

16 SENATOR MELLO: Mr. Chairman, can we take a brief  
17 recess?

18 CHAIRMAN ROBERTI: We have one more confirmation,  
19 Mr. Wilson. We will take a ten-minute recess.

20 [Thereupon a brief recess was taken.]

21 CHAIRMAN ROBERTI: The Committee will come to order.

22 Next is Governor's appointee Richard A. Wilson,  
23 Director of Forestry and Fire Protection.

24 Mr. Wilson, we'll ask you why you feel you're  
25 qualified to assume this position.

26 MR. WILSON: Thank you, Mr. Chairman.

27 Mr. Chairman and Members of the Committee, I'm a  
28





1 native-born son of California. I've worked in the resource  
2 field and worked with the environment for a little over 30  
3 years, mostly in Northern California.

4 I've lived on a ranch that has had timber, conifers,  
5 hard woods, wildlife, live stock, recreation, wilderness. I've  
6 been involved with the management and utilization of these  
7 resources.

8 I have worked at the state level with the  
9 Legislature. I'm the past President of the Planning and  
10 Conservation League. I was active when Assemblyman Z'berg and  
11 Jim Pardau, his assistant, and Senator Nejedly were active in  
12 formulating the Forest Practice Act of 1973, which is what we're  
13 operating under today, some 19 years later.

14 I served on the State Coastal Commission for seven  
15 years, and at that time was really the one person that had  
16 knowledge about the resources, and timber resources, range land  
17 resources, areas that the Director of Forestry and the  
18 Department of Forestry ought to be actively engaged in, and  
19 elements of all kinds, whether it's the management of timber, or  
20 the burning of vegetation, the burning of fuel to reduce the  
21 fire hazard.

22 I served for four years on the Board of Forestry. I  
23 was responsible for putting together the California Land Use  
24 Task Force in 1975, a document that was an effort made by the  
25 interests in conservation, the interests of business, to see if  
26 we could hammer out some better policies, and delivered this  
27 report to the Legislature and the Governor, then-Governor Brown.  
28



1                   And I basically have worked with Mendocino County at  
2 the local level, helping them attempt to achieve a sustainable  
3 forestry industry base with their Forest Advisory Committee,  
4 appointed by the Board of Supervisors. I did that for a little  
5 over one year, before I accepted the job as Director of Forestry  
6 and Fire Protection.

7                   And I've basically worked on an number of committees,  
8 as well as other public entities, beyond my work on my ranch, in  
9 education and other matters not related to resources.

10                  I also feel that we're at a crossroads in the  
11 management of the resources in the state, with the changing  
12 demographics, and the inflow of population, and the pressures  
13 that they're putting on those resources.

14                  The CDF is basically the emergency service  
15 organization of the state. It supplies emergency service, for  
16 instance, whether it's earthquakes, Southeast Los Angeles riots,  
17 or the Loma Prieta Earthquake, the I-5 trucks, and the fire --  
18 the whole fire protection system. In addition to that, it  
19 supplies the timber management program for protecting timber  
20 resources, as well as the environment, on all of our state  
21 lands, which collective add up to something like 40 million  
22 acres.

23                  It's my feeling that the pressures that are being  
24 brought to bear on these organizations, and the need for  
25 funding, is putting them in the critical position. The state's  
26 in a critical position.

27                  It would be my hope, for whatever time I have, to  
28





1 help with this organization, that we will have the needed  
2 equipment, and the needed personnel to deal with fire  
3 protection, the very highest, best kind of equipment we need to  
4 carry out our mission, as well as the ability to see that we  
5 maintain sustainable forestry in this state for future  
6 generations, and that we can be -- give these wildlands and  
7 these forest areas protection from the potential fire and fuel  
8 build-up that now is threatening the state.

9 I think that covers my remarks, Mr. Chairman. I'd be  
10 glad to entertain any questions.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Are there any questions of Mr. Wilson?

13 Is there anyone in the audience in opposition?

14 Please come forward.

15 MR. JEFFRIES: My name is Don Jeffries. I'm a  
16 private citizen. I formerly worked for the Department of  
17 Forestry for two years prior to Mr. Wilson's appointment.

18 I have a couple of concerns. I wrote a letter to all  
19 Members of the Rules Committee. I'd like to make sure that's  
20 entered into the record.

21 I had the honor of meeting Mr. Wilson just a few  
22 minutes ago. This is not, by any means, a personal concern.

23 I guess primarily I am concerned about the level of  
24 progress that organization has made in terms of promotions and  
25 advancement of minorities, particularly blacks. The thing for  
26 me -- the thing that motivated it for me and motivated my  
27 concern was the placement of an individual who I happen to have  
28





1 spent two years working for, the elevation of that person to the  
2 Chief of Human Rights position. I feel very comfortable with my  
3 knowledge of her capability in that area, and I'm concerned that  
4 she still retains that position.

5 I've communicated with the Director for sometime; I  
6 think since August of last year. He assured me this is  
7 something that he is currently working on.

8 And I guess my ultimate concern is to ensure that the  
9 Committee has the ability to ensure that I am not being asked to  
10 accept illusory promises in terms of anticipating some action,  
11 some improvement, in terms of the employment opportunities  
12 within the Department.

13 There are over 3,000 employees in the Department of  
14 Forestry. Less than 2 percent of those employees are black.

15 I happen to be familiar with the outreach and  
16 recruitment efforts of the organization, having worked in the  
17 Labor Relations Office, and I also am familiar with the skills  
18 of the people that were assigned to take care of these jobs.

19 To give you some idea of my qualifications, I have  
20 approximately 15 years' background in affirmative action-equal  
21 employment opportunity. I have a couple of years in labor  
22 relations. I've worked with the U.S. Equal Employment  
23 Opportunities Commission in San Francisco, and my  
24 responsibilities there included reviewing the progress made by  
25 individual military and other federal agencies in the Western  
26 Region, which included the four western states: Hawaii, Nevada,  
27 Arizona and California.  
28



1                   So, I'm familiar with plans to sincerely improve the  
2 representation of individuals, and I'm also familiar with  
3 successful strategies used to accomplish that end.  
4

5                   Unfortunately, in 1979-80, the State Personnel Board  
6 had implemented a sanctions order against the Department of  
7 Forestry. There is very little compliance as a consequence.  
8 They made specific recommendations which, to this day, have not  
9 been sufficiently implemented.

10                  I recognize that Mr. Wilson cannot be held  
11 accountable for lack of progress during the time that he was not  
12 there. My -- what I'm asking you for is to ensure that these  
13 issues that are important to some of us in other communities are  
14 not overlooked, because there are very many people out there who  
15 are unemployed, unfortunately resort to crime; under-employed,  
16 under-utilized, ignored, and even in L.A., rioting, because they  
17 can't find meaningful employment.

18                  If there's no priority and no consideration for their  
19 particular lifestyle, or if it's easier to drive past these  
20 folks, you need to realize I got to live with those folks as  
21 well. Some of them are relatives of mine. And I want to devote  
22 my energies to improving the quality of my life, but I also  
23 don't want to drag along the guilt of knowing that I can have  
24 some impact when it comes to addressing the quality of such  
25 lives.

26                  It's not a personal concern between me and  
27 Mr. Wilson. Obviously, he's a charming and qualified  
28 individual.



1 But I want to make sure that the Committee asks the  
2 appropriate to ensures that the issues that concern the  
3 minority community, the black community, and me personally, are  
4 and will be addressed in the future.

5 If you have any questions -- first of all, I'd like  
6 to ask if everyone had an opportunity get the letter that I  
7 sent?

8 CHAIRMAN ROBERTI: Yes, we did.

9 Let me ask Mr. Wilson a question as to what your  
10 policies are as far as hiring?

11 MR. WILSON: Mr. Chairman, I am aware of Mr.  
12 Jeffries' letter and the situation that he's developed in the  
13 letter.

14 I consider affirmative action to be something that is  
15 extremely important in the CDF organization. While there has  
16 been progress, it hasn't been, perhaps, fast enough.

17 At the time I've been there, in the area principally  
18 responsible for affirmative action services I have appointed to  
19 the highest level of my organization a woman whose chief  
20 responsibility is to take that over and to begin to review the  
21 whole procedure -- procedures we use in this particular section,  
22 of which affirmative action is one, clearly.

23 We have also elevated -- and that's the first time  
24 we've ever had a woman in this position. Also, we elevated a  
25 woman up to Division Chief, which is the first time that that  
26 has happened in the organization, and that I've asked that a  
27 plan be devised to review where we're going, what we're doing  
28







1 currently, not what we've been doing in the past.

2 In the case of Mr. Jeffries, I asked that  
3 investigations be made to see if there was any -- anything that  
4 showed that we were not in compliance with the affirmative  
5 action, and what basically our policies were, whether there was  
6 any discrimination. The finding was that, no, there was not any  
7 discrimination. The report was sent over to the EEOC. I would  
8 assume EEOC would review the Department's finding, report back  
9 if they were in error and if they need to make changes or to do  
10 something about our Department on the basis of this case.

11 However, as I pointed out, I have asked that we  
12 review our program and see that we upgrade our affirmative  
13 action program, and that will be submitted to me. I don't know  
14 just exactly how soon, Senator, because of the budget, but it  
15 will be in the next, I would think, three or four months.

16 CHAIRMAN ROBERTI: Very good, and have you put  
17 together a list of timetables, or whatever, as far as action?

18 MR. WILSON: I've asked the Deputy to do that. I  
19 have asked for that kind of a program.

20 CHAIRMAN ROBERTI: Mr. Jeffries, do you have a  
21 comment?

22 MR. JEFFRIES: I guess I'm not taking away any of the  
23 absolutely wonderful intentions that the Director has.

24 I guess I would remind you that the State Personnel  
25 Board set up the same kind of monitoring devise some years ago,  
26 and unfortunately, it -- it didn't prove to be very successful.

27 I don't expect that his intent is probably going to  
28



1 succeed, but I'd like to ensure that it does. And I'd like to  
2 make sure that I can rely on the Committee to place some  
3 mechanism or vehicle in place to ensure that it does.

4 MR. WILSON: Mr. Chairman, this is not related to  
5 this issue, but I think it speaks to the issue at hand, and that  
6 is this. That I attach a lot of importance to urban forestry,  
7 and I think that urban forestry has been, perhaps, the  
8 representatives just going and planting trees in cities.

9 I consider it to be a much broader issue, one that  
10 deals with neighborhoods, the quality of life in neighborhoods,  
11 and the ability to rehabilitate neighborhoods that obviously  
12 need to have commercial and industrial help. I'm talking about  
13 just the quality of those neighborhoods: if they're livable;  
14 that they're pleasant, a place where people want to live.

15 Towards that end, I have -- we have an Urban Advisory  
16 Council, and I have made some appointments that are people that  
17 are aware of these needs in the city. One of these persons is  
18 Kathy Marquin Snead, who is running a program in South San  
19 Francisco. It's been running through the jail and into the  
20 community. It's both a garden project as well as a tree  
21 planting project. It's basically helping people that have been  
22 in jails, rehabilitating them, and bringing them out there and  
23 back into the society. They get a half a cent out of the sales  
24 tax. It's administered with the help of the Department of  
25 Public Works.

26 I will be going down tomorrow morning and meeting  
27 with these folks with some of my personnel at 10:30 tomorrow  
28





1 morning. After we've reviewed that program, it's our intention  
2 to carry on down into Southeastern Los Angeles to see what  
3 we might do toward helping in that end in our Urban Forestry  
4 Program.

5 CHAIRMAN ROBERTI: I hope you continue with your  
6 Urban Forestry Program. I can think of nothing more important.

7 Any other questions?

8 Anyone else like to testify on the confirmation?

9 Thank you, Mr. Jeffries.

10 MR. JEFFRIES: Thank you.

11 MR. O'BRIEN: Mr. Chairman, Members, I'm Dennis  
12 O'Brien, President of the California Department of Forestry  
13 Employees Association, also affiliated with the California  
14 Professional Firefighters and the International Association of  
15 Firefighters.

16 It's my pleasure to appear before you in support of  
17 Richard Wilson for Director of the Department of Forestry.

18 In the short time we have had to get to know  
19 Mr. Wilson, I can tell you that I and other officers and members  
20 of our association have found him to be open, honest, and  
21 sincere. He is working hard in his attempts to maintain the  
22 high standards of CDF, and as you know, CDF is one of the larger  
23 fire departments in North America.

24 In addition to fighting fires, our Department also  
25 has resource responsibilities.

26 Mr. Wilson has struggled mightily with the same  
27 budget problems which are affecting all state departments. We  
28





1 are working together as much as possible to help ensure that  
2 the public we were sworn to protect will continue to be served  
3 in the best and most efficient manner possible.  
4

5 We look forward to continuing our excellent  
6 relationship with Mr. Wilson and his staff, and we urge the  
7 Members of the Rules Committee to confirm his appointment.

8 I'd be happy to answer any questions.

9 CHAIRMAN ROBERTI: No, thank you for your testimony.

10 MR. O'BRIEN: Thank you very much.

11 CHAIRMAN ROBERTI: Please come forward.

12 MS. JENNINGS: Thank you, Mr. Chairman, Members.  
13 Jennifer Jennings, Planning and Conservation League.

14 We're in strong support of Mr. Wilson's confirmation.  
15 We believe he has both the ability and the credentials to bridge  
16 the gap between the environmental community and the timber  
17 industry, and we urge your confirmation of him.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Next witness.

20 MR. HAMILTON: I'm Jim Hamilton, California Trout.

21 California Trout encourages the Senate Rules  
22 Committee to confirm Governor Wilson's appointment of Richard  
23 Wilson to the post of Director of the California Department of  
24 Forestry and Fire Protection.

25 We've known Richard Wilson for many years, think  
26 going back 20 years, since the hoxie crossing that occurred on  
27 some lands that he owns there on the middle fork of the Eel, the  
28 summer steelhead stream.



1 Since that time, California Trout has had the firm  
2 impression that Richard Wilson has impeccable credentials as a  
3 conservationist. We think that he also brings a practical, as  
4 opposed to merely pragmatic, approach to conservation and  
5 protection of the resources, both enabling the protection for  
6 trout, steelhead and also in the appropriate use of forestry  
7 lands for whatever purposes.

8 So, we encourage this Committee to further that  
9 conservation process.

10 CHAIRMAN ROBERTI: Thank you very much.

11 Anyone else?

12 Then do I hear a motion?

13 SENATOR BEVERLY: Move we recommend confirmation.

14 CHAIRMAN ROBERTI: Senator Beverly moves confirmation  
15 be recommended to the Floor.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye.

20 Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Mello Aye.

23 Senator Petris. Senator Craven. Senator Roberti.

24 CHAIRMAN ROBERTI: Aye.

25 SECRETARY WEBB: Roberti Aye.

26 CHAIRMAN ROBERTI: The vote is three to zero;  
27 confirmation's recommended to the Floor.  
28



1                   Congratulations. We look forward to working with  
2                   you.  
3

4                   MR. WILSON: Thank you very much, Mr. Chairman,  
5                   Members of the Committee.

6                   [Thereupon this portion of the  
7                   Senate Rules Committee hearing  
8                   was terminated at approximately  
9                   4:55 P.M.]

10                   --oo0oo--  
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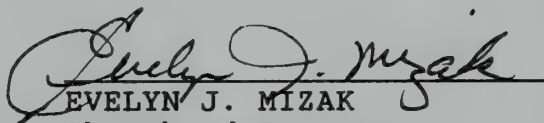
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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